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OFF-AIRPORT USER FEES

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

FEES CHARGED TO BUSINESSES DOING BUSINESS NOT LOCATED AT THE AIRPORTS

SEPTEMBER 17, 1987

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CONTENTS

Page
Opening statement by Senator Ford 1
Opening statement by Senator Kassebaum 2

LIST OF WITNESSES

Bean, George, director of aviation, Hillsborough County, FL Aviation Authority 48
  Prepared statement 49
  Questions of Senator Ford and the answers 58
Bell, Bailis, director of airports, Wichita, KS Aiport Authority 46
Hitchcock, Cornish F., legal director, Aviation Consumer Action Profect 19
  Prepared statement 21
Judy, Richard, director of aviation, Miami, FL International Airport 44
Lobeck, William E., Jr., president, Thrifty Rent-A-Car Systems, Inc 14
  Prepared statement 16
  Letters of September 21, 1987 ..... 82, 84
Shailer, Phillip S., vice president, corporate development and planning, Alamo Rent a Car, Inc 2
  Prepared statement 6

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Aaronson, Robert J., on behalf of the Port Authority of New York and New Jersey, statement 63
Air Transport Assn., statement 64
Anderson, Donald, general manager, Rentacar, statement 65
Bennett, Trina, sales manager, Roadrunner Rent-A-Car, letter 70
Coffey, Robert M., vice president, market planning, Alamo Rent A Car, letter 90
Cowper, Hon. Steve, Governor, State of Alaska, letter 81
Cunningham, Michael F., , General Rent-A-Car, letter 74
Nichols, Lester M., executive vice president, Greater Louisville Motel-Hotel Assn., Inc., letter 87
Olson, Frank A., chairman and CEO, Hertz Corp., statement 65
Paxton, Gary L., senior vice president, operations & properties, Dollar Rent A Car, letter 85
Scoggin, W. Randal, vice president, Avis Rent A Car System, letter 77
Taulbert, Clifton Lemoure, Fine Airport Parking, letter 92
Whitley, Thomas M., president, Five & Ten Rentals, Inc., letter 73
Wizer, Phil G., Jr., president, Thrifty Car Rental, letter 69

OFF-AIRPORT USER FEES

THURSDAY, SEPTEMBER 17, 1987

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION,
Washington, DC.

The committee met, pursuant to notice, at 9:50 a.m., in room SR-253, Russell Senate Office Building, Hon. Wendell H. Ford (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Steve Palmer, professional staff member; and Patty Hahn, minority staff counsel.

OPENING STATEMENT BY SENATOR FORD

Senator FORD. The committee will come to order. We apologize for the lateness of getting started but we had a little tabling motion on the Senate floor that was probably successful. We will now get on with our business here.

The hearing this morning is to examine how airports impose charges on businesses not located at an airport, but which regularly pick up customers there. Specifically the question is should public airports be able to impose fees based on the revenue earned by these off-airport businesses.

Several airports, most notably in Sarasota, Florida, have begun imposing these gross receipts fees. In response, a broad coalition of off-airport businesses and consumer groups are seeking judicial relief, as well as Federal legislation, to prohibit such fees.

This is not a new issue for me. Earlier this year when the committee was working on S. 1184, our airport and airway authorization bill, I was asked to support an amendment to that bill. Because of the importance of the airport funding bill, which must be signed into law within two weeks or Federal grants will expire, I expressed my desire to keep such an amendment off of that bill. I stated at that time I would work with both sides to see if a compromise could be achieved.

We held several meetings during the summer months at which both the business groups and airport representatives made what I believe was a good effort to resolve their differences. I am sorry to say, however, that after much give and take, no such agreement was reached. We should have raised Henry Clay.

There are many parties having an opinion on this issue. However, I believe that we can best get to the heart of the matter by hearing from the two panels scheduled to testify today. And I look forward to hearing their testimony and appreciate their willingness to work with the subcommittee on this issue.

I am very pleased to have the ranking member, Senator Kassebaum, here. And Senator, do you have an opening statement?

OPENING STATEMENT BY SENATOR KASSEBAUM

Senator Kassebaum. Just a few comments, Mr. Chairman, because I share your views, and you expressed them well.

The consideration of legislative intervention in the areas of fees assessed on airport concessions by airport operators is an issue which, to the best of my knowledge, is new before this subcommittee. I believe I am right in saying that at least in the time that I have served on the Aviation Subcommittee, we have never considered this to be an area for either deliberation or legislation.

You have outlined the concerns, and as I say, I share those with you. I would just like to say that you mentioned the negotiating sessions, and I would like to express my appreciation to those who were involved and were willing to sit down together.

I would also like to thank those on the committee staff who handled the negotiating sessions on behalf of the committee. I think particular praise should go to Martha Moloney of your staff, Mr. Chairman, who organized the meeting, sat through every negotiating session and is now undoubtedly one of the world's foremost authorities on off-airport fees.

And I really think a lot of good efforts have gone into trying to assess this particular issue. It is a very worthy hearing, and I salute you, Mr. Chairman, for trying to get it all put together.

Senator Ford. Thank you very much, Senator. I do appreciate your kind remarks about Martha. She has articulated the negotiating periods very well to me. She, along with Guy and other staff members of the Commerce Committee, I think tried awful hard. I was very impressed by the efforts there.

We have three members to share the first panel. It will be Phillip Shailer, vice president, corporate development and planning, Alamo Rent A Car; Mr. William E. Lobeck, Jr., president, Thrifty Rent-A-Car Systems; and Mr. Cornish F. Hitchcock, legal director, Aviation Consumer Action Project.

If you three gentlemen will come forward, we will begin to listen to the testimony. And if you all have not arrived at an agreement, we will go first with Mr. Shailer, then Mr. Lobeck and Mr. Hitchcock, in that order. So, Mr. Shailer, you may proceed.

STATEMENT OF PHILLIP S. SHAILER, VICE PRESIDENT, CORPORATE DEVELOPMENT AND PLANNING, ALAMO RENT A CAR, INC.

Mr. Shailer. Thank you and good morning, Mr. Chairman, and to you also, Senator Kassebaum.

My name for the record again is Phillip Shailer from Fort Lauderdale, Florida. I am a vice president with Alamo Rent A Car.

I would like to, before getting to the specific issues, thank both of you, Mr. Chairman, and you, Senator Kassebaum, for lending your good offices and for the efforts of your staff in according us the opportunity to address this issue 2nd in putting together through the good efforts of Ms. Maloney the task force negotiating sessions. Although they were unfortunately not productive, I think they did help to crystalize the extreme difference of approach and difference of opinion on this issue, depending upon which side of the fence one is as one views it, the airport side or the off-airport side.

I would like to, if I may, Mr. Chairman, submit for the record my formal statement, and then make a few remarks in attempting to capsule some of the items.

Senator FORD. That will be very acceptable, and your statement will be included in the record in full.

Mr. SHAILER. Thank you, sir.

I would also like to ask the Chair's indulgence to leave the record open following the conclusion of the hearing so that subsequent statements can be filed by other interested parties or those who may wish to impart what may or may not be of benefit to the Chair and to the subcommittee, if that is permissible.

Senator FORD. Would two weeks be long enough? If you can't drum it up by then, you can't——

Mr. SHAILER. Yes, sir. That would certainly be sufficient.

Senator FORD. All right, two weeks.

Mr. SHAILER. Thank you, sir. I would also like to, if I may, give to the Chair and to the subcommittee what we have here—and this is not intended as a Santa Claus bag—but just to file it and state what it represents, Mr. Chairman.

Senator FORD. If you would set it on the floor, I would be able to see you.

Mr. SHAILER. All right, sir.

Does it mean that the groups of cards and letters are getting that high from that many people?

Senator FORD. I can put out a letter today and get a few cards and letters myself. Just call on James Roosevelt.

Mr. SHAILER. Mr. Chairman, these are not signed by Alamo or by the members of the coalition, but rather by the consumers and the travelers who frequent the off-airport facilities around this country. And they number, accumulated over the last couple of weeks, approximately 10,000 individual consumer cards of interest in this matter. And I just want to say they are the beginning of what I think will be a tremendously large number of further cards from those who are deeply interested in this matter and who feel that action must be taken by Congress.

I am appearing here today, Mr. Chairman, not only as a representative of my employer, Alamo Rent A Car, but also a representative of a coalition called Americans Against Unfair Airport Fees. This coalition is composed of nearly 250 members representing nearly 400 businesses and organizations that are deeply concerned about the subject of today's hearing, airport access fees.

I suppose I am also here, if I can take the liberty of so saying, as an unofficial representative of thousands of consumers who are upset that unfair airport fees are coming out of their pockets. They are the ones who will be most directly affected by your decisions, so it is important not to forget them during our deliberations here.

You may recall, or Ms. Maloney certainly will, that at the first negotiating task force session our representative, Mr. Blair, said that our coalition had begun and we had, at that time, had 28 members. That statement was challenged by a member of the AOCI as inaccurate, and indeed, they were correct. It is now, as I have just said, 250 businesses and organizations representing over 400 individual proprietors, corporations and whatnot who are materially and significantly interested in, and who will be affected by, the outcome of these hearings.

The consumers who have filed these cards and the thousands and thousands of travelers like them are people who use the services of off-airport companies such as ours because they want to save money. Now, certainly it means that they are sacrificing the convenience of renting from, for example, a Hertz on-airport because Hertz has their counters right there on the airport and their cars right there on the airport grounds.

But some of these customers of companies like ours are not traveling on big business expense accounts. They are people on vacation. They are people working in small businesses or sole proprietorships who have to watch their pennies. And they want to save money whenever possible and wherever they can. So, they sacrifice convenience and choose a cost-conscious alternative. They wait for our courtesy bus. They ride a mile or two or even three down the road to our facility, and they pay less than they would otherwise have to pay if their only choice were the on-airport rent-a-car concessionaire.

Our company and dozens, literally hundreds, literally thousands of other companies like us are making it in spite of some very heavy and very serious competition from the big on-airport companies such as Hertz and Avis and National because we have identified a market niche. And I respectfully submit that that is what good business is all about. Our niche has been the cost-conscious traveler.

Until Alamo and the other off-airport companies came on the scene, the big guys had things pretty much all to themselves. They cut their own deals with the airport authorities, and life was smooth and easy, and the revenues just rolled and rolled and rolled.

Now they have some competition, and as you know, they have had to make some changes. They have had to drop their prices for one thing. And I submit that there is nothing like a little competition to keep a business honest. And more importantly, there is nothing like a little competition to benefit the consumer.

You will be hearing testimony today, Mr. Chairman, from the other side, of course. And we all know what they are going to say. We have been hearing it for months throughout the aborted task force negotiating sessions. They have been saying Alamo does not want to pay its fair share. They have labeled this an "Alamo issue," and Alamo does not want to pay its fair share. They have said it time and again from the beginning, and they are saying it right on up through today. They say the on-airport companies have to pay fees. Why shouldn't Alamo?

Mr. Chairman, let me say first and foremost that this is not an "Alamo issue." These folks in the room, the vast majority of this audience, are members of our coalition and are not related to Alamo in any respect. We have one member out here who has traveled from Washington—and I don't mean the District of Columbia, but the State of Washington—who is a sole proprietor who has 80 cars that he rents in one location. He will be forced out of business if the airports are allowed to arbitrarily impose gross receipts fees or other forms of unfair, discriminatory and arbitrary fees on off-airport businesses. And believe me, Mr. Chairman, the rent-a-car companies are just the beginning. Other off-airport business will soon follow into the airport's snare.

The misinformation campaign that the airport started at the beginning has continued right on up through today. I want to just take one moment to read from their joint letter, written by the directors of AAAE and AOCI, that went out this month to their members trying to induce and involve more of them into their coalition to offset the groundswell that we have under way.

They continue to label this the "Alamo issue," and they say, "Alamo's lobbying effort to have Congress prohibit airports from assessing appropriate charges on off-airport businesses is not weakening even though they lost their most recent case in the U.S. 11th Circuit Court of Appeals," which I will address in a moment. They talk about "Alamo's efforts to have Congress pass an amendment exempting them from fees." This is how they are going out to increase their membership and to get more people involved. And they closed by saying, "Your support and our ultimate success will depend on informing Congress that there is, indeed, a large constituency opposed to exempting Alamo from paying their fair share."

Well, Mr. Chairman, I submit that if we are going to debate this issue, that at least it ought to be done with some degree of fairness, with some degree of candor, with some degree of honesty, and not the kind of misinformation and misrepresentation that is continuing to go on out there.

Let me just put this record straight once and for all. We have never said that we or any other off-airport company wants to be exempted from paying fees. We have consistently said that we are willing to and, indeed, do in quite a few airports around this country pay reasonable user fees that are assessed and imposed by those respective airport authorities. We do not dispute reasonable fees. We have never contested it. We do not fight it. We indeed encourage it. In fact, I cannot understand why more airports have not already gone to that and have not done so quite some time ago to raise some reasonable revenue. All we have said is that we object to any system of imposing fees which singles us out by imposing a fee in an unfair, unreasonable and discriminatory fashion.

We are asking Congress to do nothing more than to stem the tide, the creeping trend that is developing, that is just as clear as can be, particularly in light of the Sarasota decision, which came out just a couple of weeks ago of which I know you are aware—that Congress merely set a national minimum standard or policy which says, airports, set your own reasonable fees. Congress is not going to be a national rent control board. Congress is not going to say how or where or why an airport can set fees or in what amount because each airport situation differs. But all Congress will be saying is that airports will impose fees only on a fair, reasonable basis without unjust discrimination so that airports will not be allowed to arbitrarily and capriciously single out one industry and impose protective fees. I want to comment on what I specifically mean about that in just a moment.

Senator **Ford**. I don't want to cut you off, but you have been going now almost 15 minutes.

Mr. **Shailer**. All right, sir.

Senator **Ford**. We have others that need to go. And the red light has been on for a little while.

Mr. **Shailer**. I am sorry, Mr. Chairman.

Senator **Ford**. That's all right. I know you are getting carried away.

Mr. **Shailer**. As you can see, Mr. Chairman, I am pretty enthused with my issue.

Senator **Ford**. Well, there will be others that will be enthused.

Mr. **Shailer**. You're absolutely right.

Senator **Ford**. And I would like to see some of that too, if I can.

Mr. **Shailer**. Thank you. May I make one final point, Mr. Chairman? Thank you, sir.

One of the issues that has been raised continuously is that we want legislation to make Congress a rent control board. We do not, as I have said.

That the courts cannot provide us with redress is best evidenced by the Sarasota decision two weeks ago which, unfortunately, in this our bicentennial Constitution year, the court said that as far as government is concerned with the equal protection clause, there is no such thing. Governments in the interest of raising revenue can do just about whatever they want. And that is what that case unfortunately said to us.

A company cannot afford to battle this in the courts. A little businessman cannot afford to fight the deep pocket, taxpayer supported airport in litigating all the various issues. It is not a local issue. It is a national issue. Coming off the airport is the completion of the travel cycle of the interstate air traveler.

There is precedent for this, Mr. Chairman. Congress acted to fill the void when the head taxes in 44 different cities developed, and the courts upheld that. Congress then stepped in to stop that horrible practice.

Likewise with the federally funded roads and bridges, there is a law which says that the fees charged have to be fair and reasonable, the same thing in section 1531 of the Aviation Act. We ask for nothing more and nothing less, Mr. Chairman, but that we be accorded those same rights and those same benefits.

We do not want to involve the FAA. Our proposal specifically would say that the FAA shall have no enforcement jurisdiction with respect to the legislation that we are seeking. We simply ask that we be accorded the private right of action to enforce the right to have fair, reasonable fees without unjust discrimination. Thank you very kindly.

[The statement follows:]

STATEMENT OF PHILLIP S. SHAILER, VICE PRESIDENT, ALAMO RENT A CAR

Mr. Chairman and members of the Subcommittee, my name is Phil Shailer and I am Vice President of Alamo Rent A Car, which is headquartered in Fort Lauderdale, Florida. I am appearing today as a representative of Alamo and a coalition called Americans Against Unfair Airport Fees (AAUAF). The coalition is composed of nearly 250 businesses and organizations that are deeply concerned about the subject of today's hearing—unreasonable and discriminatory airport access fees. This problem affects hundreds of thousands of airline passengers and thousands of small- and medium-sized businesses.

Mr. Chairman, I thank you for holding this hearing and for the opportunity to testify. In addition, a special thanks is extended to you and Senator Kassebaum for your efforts to bring about a compromise settlement of this matter. Mr. Chairman, you devoted a great deal of your personal time and effort to this problem and I commend you for your fairness and leadership.

The problem we face today, and the subject of this hearing, is neither unique nor new. Federal policies to promote travel and competition conflict with claims by local airport authorities that their need to generate revenues justifies any fee structure—no matter how unfair or anticompetitive. Airports are essential facilities and, as such, enjoy a monopoly position. In the absence of clear Congressional direction, they have economic incentives to use that monopoly position to maximize revenues without due regard for other important public policies such as enhancement of consumer choices.

Unreasonable and discriminatory airport access fees are simply a manifestation of the abuse of monopoly power, and the end result is always the same. When competition is eliminated, businesses—usually the smaller ones—are forced out of the market or prevented from entering it and consumers pay more for the services provided.

We recognize that airports need to generate revenues. The real issue is *how.* The short-sighted taxing schemes being adopted by some airports threaten to undermine a key part of the air travel network. The Congress must act now to establish general guidelines of fair and reasonable treatment for airport users because of the preeminent national interest in a competitive and efficient travel and tourism industry.

For us, the most troublesome airport access problem today is the imposition of arbitrary and excessive charges by airports on businesses located outside of the airports' property. We have no objection to paying our fair share for services that we receive from airports. The key word is "fair"—which is not always the same as "equal."

Some businesses *voluntarily* agree to pay a percentage of their revenues—usually ten percent of gross receipts—for the privilege of locating on airport premises. They do so because of market access advantages and because they often pay below-market rates for their use of airport terminal and parking facilities. In short, airports and on-airport businesses are in a joint venture relationship.

The only time when on-airport concessions and off-airport businesses receive anything resembling "equal" treatment is when both operate courtesy pick-up vans using the airport roadways. We are not complaining about this unequal level of service provided by airports to off-airport businesses. Members of our coalition have learned to compensate for their airport-imposed location disadvantages. The problem is that some airports do not like to see other companies competing with their joint ventures located on-airport. And the airports abuse their taxing powers by imposing *involuntarily* the same or similar gross receipts fees on the off-airport businesses who have deliberately chosen to compete by offering a better deal to the consumer.

An airport manager whose sole concern is raising money is in a win-win situation. Either the off-airport businesses ante-up—which adds to the airport coffers—or they go out of business—which just produces more gross receipts revenues from his joint venturers, the on-airport concessionaires. Profit maximization may seem like a good deal for the airports, but it is bad news for the consumer.

The enforcement of the fees is tied to the courtesy vehicles operated by off-airport businesses to pick up and discharge their customers at the airports. Either the fees are paid or the courtesy vans are denied access or impounded. There are currently eight airports that are imposing or attempting to impose gross receipts fees ranging from seven to ten percent. However, an informal survey we conducted indicated that many other airports are waiting to see what happens in regard to pending litigation and this legislative effort before imposing similar fees. The recent *Sarasota* decision will encourage this trend unless Congress acts decisively to stop it.

Initially these gross receipts fees have been levied against off-airport car rental companies and parking operations. However, there is clear evidence that other off-airport service providers such as hotels and motels will be targeted eventually. For example, the Raleigh-Durham Airport recently proposed that a gross receipts fee be applied to hotels and motels as well as other businesses but backed off this position as a result of strong local and national pressure. In addition, a recent study completed for DOT found that over sixty percent of the operators of major airports claimed that "hotel" courtesy vehicles are a major problem for them.

These excessive new fees on car rental companies grew out of the fee structure that developed around the on-airport car rental companies. Most on-airport rental car companies pay a ten percent gross receipts free or a guaranteed minimum, whichever is greater, in exchange for their on-airport concessions. Because of limited space, the concessions are awarded in a bidding process based on the minimum guarantee.

Even sizeable operators are severely disadvantaged under this system. For example, in New Orleans the guaranteed minimum payment for a car rental concessionaire is $450,000. A new entrant might hope to secure five percent of the estimated $33 million rental car market annually in New Orleans, which would be equal to $1.65 million in annual gross receipts. But, since the guaranteed minimum is $450,000, over a third of those gross receipts would have to be paid to the airports. In effect, the airport would be collecting a thirty-seven percent gross receipts fee from the new entrant. Only large operators with large market shares and gross receipts to match can do business efficiently under the minimum guarantee.

While on the surface the attempt to charge on-airport and off-airport car rental companies a similar gross receipts fee appears to be logical, the logic quickly breaks down under close examination which reveals:

Some on-airport companies pay minimal rent for counter areas and parking spaces on the airport premises. Off-airport companies must rent or buy land and other facilities at market rates.

Off-airport companies must comply with severe airport restrictions such as: allowance of only one courtesy vehicle per company on airport property at a time; limited access to passenger pick-up and discharge areas; a strict prohibition on solicitation of business at the airport; prohibition of advertising within the airport terminal and a prohibition against any direct telephone lines; and allowance of the airport operator to audit all business records and accounts. Often airport operators require comprehensive general liability insurance coverage on all business operations, employees and customers and require an indemnity agreement to hold the airport operator harmless from any claims. These may be appropriate when a business is also a lessee of the airport, but they are unduly burdensome and costly when imposed upon businesses that do not locate on airport property. The burden is particularly heavy for small businesses.

On-airport companies are given much greater access to the airport premises and the benefits of a permissive monopoly. Some large car rental companies have indicated that as much as forty percent of their business is from customers who walk up to their counters without a reservation. However, the overwhelming majority of rentals by the off-airport companies are reservations made in advance and not on the airport property, in Alamo's case greater than ninety percent.

Historically, these concessions have been actively sought after, especially at the larger airports. However, as a result of the limited counter space and the extremely high minimum guarantee bids that are often in the hundreds of thousands of dollars, small business people have absolutely no chance of winning a concession. In addition, long-term leases with concessionaires at many airports foreclose the opportunity to bid for up to ten or twenty years. At Sarasota, the next bidding for airport-leased land will not take place until 1996.

If off-airport gross receipts fees become widely adopted, the competitive advantages of an airport concession will be overwhelming. Off-airport operations will be forced to join in the bidding, and minimum guarantees will be driven far above today's high levels. Only the largest concessionaires will remain in business, and without off-airport competition they will be free to raise prices.

Despite these numerous and significant disadvantages off-airport rental car companies have been able to compete. The explanation is simple: they have met the demands of consumers. By offering first rate service and lower prices they created a market which the on-airport companies were not bothering to serve. Cost-conscious vacationers and businesspeople began to find that they could afford to rent cars, many for the first time, if they were willing to travel some distance away from the airport.

During the past several weeks over ten thousand customers of off-airport rental car companies have written to Congress to demonstrate that they are concerned over the cost of travel and appreciate the savings available off-airport. They do not want to lose those savings because of unreasonable and discriminatory gross receipt fees which go into the airports' pockets.

The fees which airports are trying to impose are unfair to consumers in several ways:

The fees will be passed on to consumers thereby resulting in higher prices. A rough estimate that we have computed indicates that consumers could pay $250 million more if all airports immediately impose a gross receipts fee. However, the costs in the long run will be many times more because this estimate does not take into consideration the probable increase in prices as a result of decreased competition. As the higher fees make the off-airport companies less competitive the small companies will be forced out of business and the industry will once again be concentrated in the hands of a few large companies in partnership with the airports.

The amount of the fees has little or no relationship to the actual use off-airport companies make of the airport roads or passenger loading areas. For example, a passenger might rent a car for one week for $100 while another passenger might rent a car for two days for $20. If the airport imposes a ten percent gross receipts fee, the end result is that the first passenger will pay the airport ten dollars and the other passenger two dollars, although the use of the airport roads and loading areas is the same for both. The same ten percent collected from an on-airport rental car company, such as Hertz, permits a much heavier use of airport facilities, including the crucial right to solicit and transact business on airport property.

Mr. Chairman, unreasonable and discriminatory fees are but one aspect of this problem. For many years some of the airports have used other means of harassment to discourage or eliminate off-airport competition. A brief review of some of the landmark cases in this area will give a clear understanding of the total picture. In addition, they should cause Members of Congress to think twice when the airports wrap themselves in the public service mantel and proclaim that they always act in the best interest of the public.

1. In 1971 Park 'N Fly of Texas filed suit against the City of Houston when the airport attempted to classify Park 'N Fly's courtesy vehicles in a discriminatory manner that put them at a substantial economic disadvantage relative to the city operated buses. The Federal District Court in Houston held that the ordinance was arbitrary, unreasonable, and burdensome on interstate commerce and stated that:

". . . the total lack of evidence that there is truly any purpose to be served by the questioned sections of the ordinance other than to secure economic advantage over the competitors of the city's parking concession-aire brings me to the realization that this exercise of power by the city is an unreasonable and impermissible one. Purporting to be a traffic and safety ordinance, the sole actual purpose of the classification system in the ordinance is one of economic regulation."

2. In 1977 the Miami Airport attempted to institute a permit system for ground transportation operators which would have severely restricted the use of the airport by courtesy vans through a fee system and unreasonable access procedures. Several car rental companies instituted action in the Federal District Court alleging violation of constitutional guarantee of equal protection and the imposition of burdens and obstruction upon interstate commerce and violations of the Sherman and Clayton Acts.

In early 1979, without trial or adjudication, the airport consented to the entry of a severe permanent injunction which prohibits the airport from establishing any restraint upon the pick-up or drop off of passengers. The injunction further restrains the airport from requiring any permit or imposing any fee as a condition of access to the airport, or form requiring proof of pre-existing reservations. Finally, the injunction requires the airport to maintain pick-up and drop off spots which are reasonably comparable to those established for the on-airport concessionaire rental car companies.

The injunction is still in effect even though there have been repeated attempts to dissolve or modify it. For an airport to consent to this kind of restrictive injunction indicates that there was compelling and damaging evidence of gross misconduct.

3. A consent order by the Federal Trade Commission in 1976 against the three largest car rental companies is important for understanding the kind of anticompetitive atmosphere that small car rental companies have encountered while attempting to service the airport market. Although the airports were not charged with having conspired with the companies, it is evident that they either permitted themselves to be used by the companies or were grossly negligent in protecting the interests of the public.

The FTC order required that the three car rental companies "cease conspiring to or entering into anticompetitive agreements which tend to fix prices, monopolize the on-airport passenger car rental market and hinder the effective operations of off-airport competitors." In regard to the effect on the public, the FTC order stated that "American consumers have been forced to pay substantially higher prices for the rental of passenger automobiles than they would have had to pay absent respondents' acts and practices."

According to the FTC the three companies' combined sales accounted for approximately ninety-six percent of the on-airport auto rental market. One can only ask where were the airports when the public was being taken to the cleaners by the companies the airports were in partnership with?

The answer is that there is no effective way to hold the airports accountable for the use of unfair access fees to stifle competition and maximize airport revenues and the profits of our on-airport competitors. The anticompetitive and anticonsumer effects of unfair fee structures cannot be attacked directly under current law.

4. In 1979, Pinehurst Airlines successfully contended in a suit against a North Carolina Airport authority that imposition of inflated charges for actual services rendered did not constitute a justifiable exercise of authority by the airport in question.

5. In 1982, Pueblo Aircraft Service sued the City of Pueblo for anticompetitive activity in connection with monopolizing sources of aviation fuel for fixed-based operators, and imposing a "surcharge" on fuel—five and a half cents a gallon above cost—which required fixed-based operators to pay an artificially inflated price for the fuel. The trial court and the Court of Appeals dismissed the complaint on the ground that the airport was immune from anti-trust liability under the state action doctrine.

6. Airports also have sought to curtail competition among airport terminal ground transportation services. In a 1982 court case, Charter Limousine Company successfully sued Dade County Airport for denying access to the Miami Airport by its buses. Such arbitrary anticompetitive policies were found to be a restraint on interstate commerce.

7. Where federal funds have been expended to finance construction of airports, the granting of exclusive leases by airports to certain air services to the detriment of potential competitors has been successfully challenged. Thus, when Scott Niswonger brought suit against Greenville, Tennessee's municipal airport in 1975, contesting the Airport's freeze-out of competitors due to a "sweetheart" deal between the Airport and one air service operator, the courts upheld the challenge.

8. In one of the more compelling examples of anticompetitive action undertaken by airports, six major on-airport car rental companies were charged in 1978 with violating the Sherman Act for inducing airport officials in bad faith to exclude off-airport car rental companies from access to airport terminal facilities. After extensive litigation, the complaints were dismissed on the basis that the defendants' conduct was immunized by the Noerr-Pennington doctrine.

Efforts of our competitors to persuade airport authorities to restrict access to airline passengers or to raise our costs by charging unreasonable access fees cannot be challenged under the antitrust laws due to the Noerr-Pennington doctrine. While this defense was created to protect the First Amendment right to petition the government, it unfortunately permits entrenched businesses to promote anticompetitive regulatory decisions, regardless of whether the resulting regulation injures competition. Airports also have been successful in asserting that their activities are protected by the state action doctrine and are, therefore, not subject to antitrust lawsuits.

The absence of a cause of action under the antitrust laws does not imply the absence of anticompetitive effects. Rather, as Federal Trade Commissioner Terry Calvani pointed out recently in a speech, we are seeing an alarming increase in non-price predation strategies in which rivals can, with comparatively little cost of litigation risk, promote public sector decisions that raise competitors' costs and drive them out of business.

Ordinarily, the threat that essential facilities will abuse their monopoly position is dealt with by requiring that fees charged to users be just and reasonable. In fact, such a federally mandated standard governs the relationship between the airports and airlines. Ultimately, the federal government—not the airports—decides whether fees charged to the airlines are fair and reasonable.

Airports also are not politically accountable to those who ultimately must pay these fees and, therefore, have every incentive to abuse their monopoly position. Unlike local citizens, only out-of-town air travelers regularly use rental car companies and hotels which operate courtesy vans. Because airports can selectively tax out-of-town travelers serviced by our coalition members, another common method of insuring governmental accountability is missing. If local residents were being charged excessive fees for use of their airport, they could air their grievances through the local political process.

In theory, political accountability should ensure that governmental agencies exercise fiscal responsibility. The danger that we see is perhaps best described as the "Taj Mahal" phenomenon. As long as the revenue burden falls almost exclusively on non-resident airline travelers, there is no guarantee that the airport will exercise fiscal restraint in administering or developing its facilities.

Discretionary passengers do not select a particular destination on the basis of the airline terminal; they want an affordable vacation in the area served by the airport. There is consequently an overriding federal interest in protecting these consumers from excessive and discriminatory taxation masquerading as airport access fees.

Unfortunately, under today's laws, our attempts to gain relief in the courts from unreasonable and discriminatory fees are simply not heard on the merits. Anticompetitive policies of airports have been shielded from judicial scrutiny by the state action and Noerr-Pennington doctrines. Unlike federal statutory protection afforded to airlines and passengers, off-airport businesses enjoy no explicit federal protection from unreasonable airport policies. Moreover, airport authorities are not politically accountable in traditional ways. In the absence of these protections, the only legal tools we have available to protect our interests and those of the consumer have been lawsuits challenging the constitutionality of actions taken by airport authorities.

In 1982 the Sarasota-Manatee Airport Authority imposed a ten percent gross receipts fee on off-airport car rental companies and a nominal fee on other off-airport service providers. Alamo challenged this assessment in the United States District Court for the Middle District of Florida. In September 1985, the Court ruled for Alamo on constitutional grounds. The Court held that off-airport car rental companies were denied equal protection of the law for two reasons. First, there was no "apparent, rational reason" for charging one group of off-airport service providers that were operating courtesy vans, a nominal fee and charging the other group (car rental companies) a substantial percentage of its gross receipts. Second, treating Alamo similarly in relation to the differently situated on-airport companies with their added benefits either had no rational basis or was intended to promote the competitive advantage of the on-airport companies.

On appeal, in an opinion issued on August 25, the Eleventh Circuit to our disappointment reversed the District Court. The Court of Appeals held that the Airport Authority's fee structure met minimal constitutional standards because it was rationally related to its objectives of maximizing revenue and obtaining fees from all car rental companies. Thus, the ten percent fee for off-airport companies survived the low "minimum rational basis" test applicable to constitutional equal protection questions. At the same time, the Court conceded that the schedule of fees might have the effect of placing off-airport companies at a competitive disadvantage. The Court declined, however, to rule on the wisdom of the fees, stating that ". . . the federal courts do not sit as the arbiters of the wisdom or utility of these laws."

The case has been remanded to the District Court for adjudication of the other issues raised by Alamo, namely, that the fee is an unreasonable burden on interstate commerce, violates the due process clauses of the U.S. and Florida Constitutions, and violates Florida's Government in the Sunshine Law.

Even before the Appeals court's decision in *Sarasota,* other airports were devising ways to circumvent the District Court's decision. Two months ago West Palm Beach airport instituted a similar charge of eight percent which clearly was designed to get around the *Sarasota* decision.

In a pair of opinions the District Court for the Western District of Louisiana upheld the seven percent gross receipts fee imposed by the Shreveport Airport Authority against constitutional challenges that it denied equal protection of the laws and that it was an unreasonable burden upon interstate commerce. The plaintiff in that case, an Avis licensee, plans an appeal to the Fifth Circuit Court of Appeals.

It should be of interest to the Senate Commerce Committee that a key case relied on by the Court in the *Shreveport* case was *Evansville-Vanderburgh Airport Authority v. Delta Airlines, Inc.,* 405 U.S. 707 (1972). This Supreme Court case upheld the right of states and their local subdivisions to charge air passengers a $1 head tax. The following year, however, the Congress overruled this holding by enacting the antihead tax provision of the Federal Aviation Act, 49 U.S.C. § 1513.

In regard to the *Evansville* case the Senate Commerce Committee issued a very clear warning. The Committee report dealing with the legislation which added Section 1513 states: "While [the *Evansville*] decision has invited states and local governments to enact head taxes or fees on air travelers, the Court decision does not provide adequate safeguards to prevent undue or discriminatory taxation." In enacting Section 1513, the Congress intended to vindicate the federal interest in the free flow of interstate commerce by prohibiting local authorities from creating a patchwork of competing local taxes which would unreasonably burden interstate air passengers. We believe that gross receipts fees of the type upheld by the Court in *Sarasota* and *Shreveport* evade the Congressional mandate that air passengers should not be burdened, directly or indirectly, by such taxes. I believe that the District Court should have taken this Committee's concerns into consideration in the Shreveport case.

The strong reliance on *Evansville* should prompt this Committee to view the decision in the *Shreveport* case with a great deal of suspicion.

The experience of Alamo and others who have sought relief in the courts from unreasonable and discriminatory fees shows that there is a critical need for the Congress to set policy in this area. We have not hestitated to petition the courts, and we remain confident that, guided by a proper standard, the courts would do their duty. What is needed at this time is a clear statement from the Congress that airports must treat airport users in a fair and reasonable manner. The Congress should respond to the *Shreveport* and *Sarasota* cases just as it responded to the *Evansville* case in 1972, by placing reasonable restrictions on the aiports' authority to charge fees.

Mr. Chairman, the off-airport service providers are not asking for a free ride. We willingly pay reasonable and non-discriminatory fees at many of the airports we now serve. However, if the current trend continues unchecked we face the prospect of airports using access fees as a way of maximizing revenues instead of recovering justifiable costs, and of stifling competition and running companies out of business.

The solution we have proposed would simply require that airports charge fees that are reasonable and not unjustly discriminatory. It specifically precludes enforcement by the FAA and places our remedy solely within the courts through a private right of action. In response to concerns expressed by the airports, it would give them clear authority to control traffic by allowing airports to designate customer pick-up and discharge areas on a fair and reasonable basis and without unjust discrimination.

Examples of fair and reasonable fees can be found at many airports. Near the airport in San Francisco there are nine rental car companies, thirty-one hotels, and three commercial parking lots that compete with on-airport operations. Every time a courtesy van uses the airport it must pay a twenty-five cent toll—several times an hour, all day along, seven days a week. At Dallas-Fort Worth Airport all vehicles which enter the airport pay a fifty cent toll. Other systems which relate the charge to actual usage are in place in San Diego, Seattle, Tucson, Denver, and Reno.

There is ample precedent and justification for this type of action by the federal government:

1. The issue of access fees has produced litigation in the federal courts. Congress should clarify this matter before other litigation further confuses the matter. In addition, these cases have revolved around basic constitutional rights which are of legitimate concern to the Congress.

2. When Congress passed Section 1513 of the Federal Aviation Act it preempted the states in a key area of revenue collection for airport purposes by prohibiting the imposition of head taxes or other passenger fees either directly or indirectly. In addition to setting a precedent by limiting the ability of airports to collect certain kinds of fees or taxes, it placed large sums of money under the direct control of the federal government which were intended to be used for airport improvement programs. However, at a time when airports are urgently in need of funds, billions of dollars are piling up in the Aviation Trust Fund. As a result, airports are beginning to gouge those sources that they believe have not been foreclosed by federal statute. Although we applaud the effort made by Chairman Ford and the members of the Aviation Subcommittee to increase funding for the airports, the use of unreasonable and discriminatory fees is increasing and also must be dealt with.

3. The federal government has acted to require a fair and equitable fee structure for the airlines. This basic principle of fair play should be applied to those businesses that assist airline passengers in completing their journeys. Section 511(a)(1) of the Airport and Airway Improvement Act requires that the Secretary of Transportation must receive assurances from the airport that the airport will be available for public use on "fair and reasonable terms and without unjust discrimination" before approving an airport development project. Pursuant to this federally mandated standard, local airport authorities have generally adopted a rate structure for aircraft landing fees that is computed by formula.

The airports apparently have had no difficulty in developing a cost-based user fee that takes into account use sensitive factors—aircraft weight and frequency—that reasonably relate to the costs incurred by the airport to build and maintain its facilities. The precise amount of the cost variable is revised periodically to recover an amount of revenue projected to cover costs. Because different airports experience different costs, landing fees vary among airports. However, an airport cannot unreasonably discriminate between fees charged to airlines operating the same aircraft at the same airport, nor is the fee collected based upon the value of each passenger's ticket.

In addition, no airline desiring to become a signatory to the airport use agreement can be excluded, and the determination of whether a fee or regulation is unjustly discriminatory is based not only on whether the carriers make a similar use of the airport but also on whether they utilize similar facilities.

While Sec. 511(a)(1) currently recognizes two classifications as reasonable, the House Public Works and Transportation Committee recently indicated that the discrimination between passenger and all cargo aircraft should be eliminated. The House Report states:

"The charges and conditions for use of the airport facility should not be based on the contents of the aircraft. However, charges and conditions for the use of the airport may vary if cargo and passenger carriers use different facilities, or use the same facilities in differing degrees, so long as the charges or conditions are reasonably related to the use of such facilities." H. Rep. No. 100-123, Part 2, 100th Cong., 1st Sess. 13.

This would redress the anticompetitive effects of airport fee structures through a clear Congressional statement that a reasonable classification must be based on different use of facilities, not on the basis of a carrier's business.

4. If appropriations are enacted as currently proposed, the nation's airports will be federally subsidized by about $1.7 billion in fiscal 1988. This massive federal investment in the airports gives Congress more than adequate justification for imposing basic rules of fair play upon those airports that receive the money. In other non-aviation related areas there have been similar requirements. For example, since 1906 statutes dealing with the construction of bridges and tunnels with federal funds have required that any tolls be reasonable and just. The principle of justness and reasonableness has been universally used in public utility-type ratemaking, and is well understood by the courts.

5. The courtesy vehicles operated by off-airport service providers primarily utilize the airport roads. The rules of the Federal Aviation Administration do place limits on the funding of roadways by prohibiting the use of airport funds to resolve general highway problems. However, "airport entrance roads that are definitely needed and are intended only as a way in and out of the airport are eligible." In addition, "construction, alteration, and repair of airport roads and streets that are entirely within the airport boundaries are eligible under the program, if needed for operating and maintaining the airport." (14 C.F.R. Sec. 151.89(a), (b)). If federal funds can be used for these roads, then reasonable standards can also be imposed regarding those who make use of them.

If the foregoing is not convincing to this Subcommittee, there is one last item which should make you extremely concerned about the direction the airports would like to go with their fee structures. During the last three months, at the encouragement of Senators Ford and Kassebaum and Congressmen Mineta and Gingrich, we have attempted to negotiate a compromise with the airports on this issue. In all, six meetings were held between representatives of off-airport service providers and the AOCI and AAAE. During the course of those meetings we modified our proposal on numerous occasions but the airports never made a concrete proposal until the last meeting. At the time they unveiled a legislative proposal that shocked us with its scope and audacity. The proposal would have given the airports far more authority to tax and set fees than they currently have and, in fact, would have permitted them to charge almost every commercial entity that makes any "use" of the airport a fee.

Under the AOCI and AAAE proposal fees could be charged for three types of use:

1. A fee for the actual use of the airport. This is basically the kind of fee system we have recommended and would be reasonably related to the costs associated with the use.

2. A fee for the "economic benefits" derived from the use of the airport. This brings a whole new universe of possible charges. Since airports are intended to bring economic benefit to the area they service, theoretically any business that operates within that area could be assessed a fee. More specifically, fees could be charged to companies whose executives or salespersons use the airport for business trips. Or, if two business people meet in an airport VIP lounge to transact a business deal the airport could cut itself in for a percentage.

3. In cases where off-airport commercial entities compete with on-airport tenants or concessionaires they could be charged a fee that reflects any disadvantages that accrue to the on-airport service. In other words, no matter how inefficient or overpriced the on-airport service, the airports could raise the costs of the off-airport service providers to the same level by imposing a fee. Since this is not limited to entities that use courtesy vehicles as we have recommended, it could bring under its coverage businesses that compete in some way but don't even use courtesy vehicles.

For example, McDonalds has built a large new restaurant very close to one of the entrances to National Airport. Many people would prefer to eat at McDonalds rather than the airport restaurants that tend to be overpriced. The mere fact that a business was in competition with an airport concession could be sufficient to allow the airport to impose a fee on a company such as McDonalds.

It is clear from the airport proposal that they do in fact have an agenda that will greatly extend their fee setting or taxing authority. If Congress does not act to set fair and reasonable standards, the airports will fill this vacuum with new fee structures that are enforced with long and expensive court battles. The losers in this battle will be small business people who will be forced out of the market and consumers who will pay substantially higher prices. The solution rests with this subcommittee and I have faith that you will do what is right.

Senator FORD. Mr. Lobeck?

STATEMENT OF WILLIAM E. LOBECK, JR., PRESIDENT, THRIFTY RENT-A-CAR SYSTEMS, INC.

Mr. LOBECK. Thank you, Mr. Chairman, Senator Kassebaum.

I am here representing Thrifty Rent-A-Car System. Thrifty is a 25 year old company that is headquartered in Tulsa, Oklahoma. We are an organization or a franchisor. We have over 100 licensees that operate about 360 locations throughout these United States. I am very proud to say that approximately 25 percent of our licensee body is represented here today.

We are here to emphasize that this is not an Alamo issue. This is an off-airport business issue.

Thrifty chose to operate off-airport over 25 years ago because we wanted to. We chose to operate because we were bringing something to the consumer that we thought there was a need for, and that was value. We were a low-priced alternative to the in-airport operator. That is how we started, and that is what we are today. And we do not want to change our philosophy.

But things have happened through the years that have changed other people's perceptions of us. We would have you or would want you to believe that value is like beauty: it is in the eyes of the beholder. And when the airline industry was deregulated, something phenomenal happened. Airline travel became a better value to more people. More people started flying. They were value-conscious flyers and travelers. And they thought about Thrifty. Our business grew and it has flourished because we have continued to offer value.

Now for some reason we are perceived—we, the off-airport industries—as a growing problem. We are a growing problem because of what we do. I would like for you to think for a moment that maybe the real problem today is that our airport authorities have lost sight of where they came from and what their role is. They believe we are costing them dollars. If the historians of the car rental industry are right, the story goes something like this.

Sometime after the end of World War II, a young upstart in the car rental business noticed that an awful lot of people were getting out of taxicabs in front of his downtown rent-a- car office and walking in to rent cars. He asked them where they were coming from. They were coming from the airport. He had an idea. You know, if I got out there in that airport, I might get first shot at them. I might get a first shot that beats out the guy down the street. He went to the airport and he said, Mr. Airport Manager, I got a deal for you.

I want to pay you to be here, to give first exposure to my company and the guy getting off the plane, that traveler.

And the car rental guy said, well. He said, look, it is incremental revenue to you. It is found money. You are not getting a dime from me today. Let me pay you. The airport thought it was a pretty good idea. From Warren Avis' downtown Detroit operation an industry grew. And it has grown phenomenally.

Airports grew too, and deregulation caused them to grow because of hundreds of thousands of additional air travelers that are getting off the planes. And as they grew, car rental became a problem for them. We took up space. On-airport car rental took up space. Pretty soon, instead of being able to walk to a counter, sign a rental agreement and walk 50 feet across the street to a parking lot and pick up your car, you had to get in a bus. And you rode a rent-a-car company's bus to a remote location.

To some that caused a decrease in the value of that in- terminal service. To some it was an inconvenience. To many it is still more convenient to rent in the airport.

The truth of the matter is that across this Nation more car rentals still take place at the in-terminal locations than anyplace else. But the airports are now saying, hey, what once was incremental revenue from concession fees of the car rental companies has now become an integral part of their budgets. And we are taking from them. We are not taking something from them. We are not a threat to the revenue base. We were a plus to their revenue before.

I said that they forget where they came from, and maybe they have forgotten their role. Their role is one that I see is fairly simple. They are there to run safe, efficient airports for the community. When I say efficient, I mean dollar-wise efficient, as well as efficient in handling the people that come there.

Nobody flies to Washington National Airport because it is a nice place to go. They flew to Washington National Airport to get to Washington, D.C. or northern Virginia or the suburbs of Maryland. Nobody flies to Miami because it's a nice airport. They flew to Miami to go to the beach or to conduct business.

Now, I am not going to tell you that airports do not have a right to charge for the services they render to the traveling public. But I will tell you I don't think they have a right to charge in such a manner that they are promoting a monopoly. And that is what they are trying to do.

The Thrifty operators, who are also many in the parking business and our off-airport competitors, are still doing what we set out to do 25 years ago. And that is to provide a value alternative to the traveling public.

The airport is a conduit. It is not the reason for going to a city. It should, as I said, offer services that add value and convenience to some or all of the people. People buy a hot dog in the airport and pay two and a half bucks because it is convenient. They rent a car there and pay more than they would off-airport because to some the convenience of being there has value. Others choose to move off-airport because they are more cost-conscious renters.

The bottom line of this thing in terms of who pays is: if you look at a single entity that is going to pay if the off-airport companies have to pay a percentage of their gross receipts is the biggest car rental consumer in the United States of America, the United States Government. And the government gets favored rates today, very favored rates. And the government is one of the largest users of off-airport car rental because the government is cost conscious.

The fact that the government rates charged by the big guys or the other guys, however you want to term them, that operate in the airport are only $2 or $3 a day different from the off-airport operators is not a coincidence. If you walk into Washington National Airport to rent a car as Joe Citizen today without an advanced super saver reservation, you are going to pay 58 bucks a day for a compact car. If you work for the United States Government, you can pay $31. If you go off-airport to a Thrifty or one of our other off-airport competitors, you are going to pay $27 or $28. I will tell you that if we had to raise our rates, if you think for a moment the other guys that are in-terminal are going to stay at $31, I submit I don't think that is exactly the way it works.

The other thing that I think you should be aware of—analogy, if you will—we have a unique Nation here. Our airports are run in a unique manner. We are the only country in the world, or one of the only countries in the world, where our airports are not run by the Federal or national government. They are run by States and municipalities. In the United Kingdom they just privatized the airports. They made them a public utility. They took them public, sold stock to the public.

If you could think for one moment of a public utility walking before this committee and saying we want a right to charge some of our competitors a user's fee simply because they are costing us money, they would get laughed off the Hill.

The other way you might look at it too is if the United States Postal Service walked in here and said, folks, we got a problem. Federal Express and United Parcel Service are eroding our revenue base. We want to charge a user fee to them. They would get laughed off the Hill. They would get laughed off the Hill.

Anyway, in conclusion we are not asking for a free ride, never have. We'll pay a reasonable fee. All we are asking for is that the fee be reasonable and fair.

Thank you for your time.

[The statement follows:]

STATEMENT OF WILLIAM E. LOBECK, JR., PRESIDENT, THRIFTY RENT-A-CAR SYSTEM, INC.

Mr. Chairman, members of the subcommittee, I am appearing today representing Thirfty Rent-A-Car System and its more than 100 licensees in the United States, who operate more than 300 Thrifty car rental locations in 47 states and several territories. On behalf of those licensees, many of whom are here today, and on behalf of my company, I thank you for the opportunity to appear and share with you some concerns regarding recent activities of local airport authorities, and to ask your help in resolving the situation.

Headquartered in Tulsa, Oklahoma, Thrifty and its licensees, who are independent business people operating under franchise agreements from us, have operated off-airport care rental facilities for more than 25 years. We and many of our licensees have added parking services to many of our locations. For most of that time, we have enjoyed reasonable access to airport customer pick-up areas for our courtesy vehicles to serve our customers. Most airports have had no restrictions on our use in this way of the public roadways and curbsides. Those airports which restricted us in any way, usually did so by designating a customer pick-up area and/or charging a reasonable permit fee, or per-trip fee. Such fees were usually charged only in larger airports, and only for the purposes of improving traffic control. We have paid these fees and cooperated with the designation of pick-up areas virtually without protest, because we have found them generally reasonable. We are in no way opposed to paying on a fair and equitable basis for a service we receive. Now, however, we are faced with a problem. Recently, some airports have proposed, and in some cases imposed, an unreasonable, discriminatory, and unfair burden on our businesses by requiring that we pay a percentage of our revenues to the airport for the privilege of picking up our car rental customers. In most cases, the proposed percentage is equal to or only slightly less than the percentage charged on airport concessionaires of care rental services even though the benefits they receive are greater. In most cases, there is no effort to impose similar fees on courtesy vehicles of other kinds of businesses. We believe this is unfair.

The airports seem to be saying that we are cutting into their revenue base because we have been successful in competing against their on-airport concessionaries, and they therefore have a right to "equalize" the competitive factor by charging us fees too. This is an irrational and dangerous approach. Experience has shown us that there is a segment of the traveling public which will be inconvenienced for "value". VALUE is in the eye of the beholder. A traveler will pay $2.50 in the airport terminal for a hot dog worth a dollar rather than drive off-airport to eat a meal, because it is a short term need, the expense is relatively small, and time is a critical factor. Renting is a relatively larger expense, fills a longer term need and the extra time needed to go off airport is short in relation to the overall length of the rental. Therefore, a traveler will go off airport for car rental VALUE. We in the off-airport car rental business have provided that VALUE. Thrifty and its licensees have spent 25 years and millions of dollars identifying, advertising to, cultivating, and servicing the VALUE minded customer. Our customers come to us despite the perceived inconvenience because they know us. In most instance we do not even have courtesy phones or designated pick-up areas so there are seldom means to direct "natural" customers to us.

The airport does not PROVIDE us our customer. The airport acts merely as a conduit. A passenger does not fly into a particular airport because he has shopped around and found the best deal for that week on airports, or because the airport has done a better job of advertising itself, or because it is prettier or cleaner. A passenger flies into a particular airport because it is the only game in town, it is with few exceptions, his only choice if he wants to get to a particular city at a particular time. In contrast, the customer makes the choice of car rental services he wishes to use, in the same way the customer decides whether to eat or park, or stay in a hotel off or on airport or whether to buy tickets at the ticket counter or from a travel agent. The logic airport authorities are using in charging a percentage fee to off-airport care rental companies is that the customer rode on an airplane, so the airport should be entitled to a percentage of the revenue he generates. If you follow the logic of the airports in charging percentage fees to off-airport car rental companies to its logical extreme, the airports could one day decide that other competing businesses were legitimate targets of their percentage fee ordinances. Soon the concept of customer choice would go out the window.

Not only does such an effort to restrict competition appear on its face unfair, but so does the fact that others who provide similar services are not being charged a similar fee. That means a customer's choice to ride the hotel courtesy vehicle or the car rental courtesy vehicle may well determine whether he pays, directly or indirectly, a high price for his services. Let me illustrate: Customer 1 arrives on a late flight. He has a car rental reservation for morning because his first need for the car is mid-morning and he takes the shuttle to the hotel. No charge for the hotel shuttle. The Thrifty courtesy vehicle picks him up at his hotel the next morning. The car rental revenue is not subject to the percentage fee. Customer 2 arrives a little earlier in the evening, has a diner engagement away from his hotel, so takes the Thrifty courtesy vehicle to the Thrifty location, rents his car and drives to the same hotel. The car rental revenue is subject to the percentage fee.

Although this seems so obviously unfair, the airports have offered some rationale for their actions. I want to discuss with you a couple of the reasons offered by airports for imposing percentage fees on us, and give you my observation on why they won't hold water.

One rationale is a need for traffic control. There is no doubt that traffic at airports is worse than 5 to 10 years ago. There are more travelers because of airline deregulation; people who used to ride the bus now fly. Therefore, it is difficult to argue with the objective of traffic control. What we do take issue with is the means selected by the airport authorities. We in the car rental and parking industries did not create the problem. In fact, the services we provide may help moderate the problem. The average private passenger car arriving at the airport carries less than 2.5 people. Ours carry an average of 4 to 5. Thus, you might even say we are already contributing to traffic control. It is our experience that airports have been slow to respond to the traffic problems. They did not prepare for the traffic increases, although they cannot be faulted for underestimating the magnitude of the problem, and they cannot be blamed for the difficulties they have had obtaining trust fund monies to do needed capital improvements. However, they also have not, as a rule, sought the advice or help of those of us in the ground transportation business in solving their problems. If they did, we believe that we could find some mutually acceptable solutions to any problems created by our courtesy vehicles and we would willingly pay a reasonable, nondiscriminatory fee for the facilities we actually use and the services we actually receive. Charging a percentage fee will not solve the traffic problems and neither will imposing a fee on only one segment of the courtesy vehicle traffic.

The airports will also argue that car rental is part of their public service requirement and they have some overriding interest in controlling it. Further, they would argue that car rental is different, that there is competition for airport concessions and we are all free to be on airport if we want. Neither is true.

The running of an airport is an essential public service. It would not be feasible to have private interests competing with each other in the building and operating of major public airport facilities. Not only would the cost make such competition unrealistic, but safety of the air traveling public (and those on the ground) is an overriding public interest. Car rental is merely an ancillary service. If the airports did not provide any on-airport car rental booths, private enterprise would rise to the occasion. In fact, in many airports today, even on-airport car rental facilities are remote from the terminal and customers use courtesy phones and courtesy vehicles to get to them. So is it a necessity for airports to provide on-airport car rental facilities? No. Indeed, airports have not chosen to provide such services with their own equipment and employees. This is an area where private enterprise serves the public interest better. In the past, that has always worked well. The customer received convenience, the on-airport car rental concessionaires received the significant advantage of walk-up traffic, and, for the VALUE minded customer who did not mind being inconvenienced, there were Thrifty and its off-airport competitors. Now the airports are saying only some aspects of the private enterprise concept are appropriate. The sharp rise in air travel has sharply increased the need for car rental services and the number of companies willing to try to provide the service. However, there are only a limited number of concessions available on any given airport. They are necessarily limited by space considerations. Typically, these concessions involve long term agreements with leases of counters and ground space and facilities sometimes at very favorable rates and they require percentage fees with very high minimums. This, too, is probably a necessary to assure that the percentage fees make up for the discount in the rental rates for the facilities, and to assure financial stability of the concessionaires. The practical effect, however, is to eliminate all but the very largest companies from competition for those slots in most markets, even when the slots do come up for bid. The effect is a publicly supported oligopoly in the car rental business. Let me illustrate the problem of required minimums. We have found an amazing similarity in bidding requirements among various cities. Our experience has shown that a company must have a 10% market share in order to meet the minimum in most cities. Thus, in a city where Thrifty may have 3.5 to 4.5 percent of the market, it would not be feasible for us or our licensee to bid. Our effective concession rate would be more than double that of those with a larger market share. Couple this with the fact that we have no control over how an airport organizes its care rental services, and the fixed cost requirement may also be too great. This was the situation in Tulsa recently, where meeting the minimum was feasible if it had not been for the requirement to staff two car rental booths. One extreme example is Dallas/Fort Worth, where the minimum requirement would have resulted in our fees being 18% to 20% of our gross!

We and our licensees are further limited in our ability to bid for airport concessions because we own or have long term leases on property near the airport, and would have to dispose of that property if we were successful bidders. By the same token, since we are a network of independent businesses, one location cannot take a loss to stay on airport and have it absorbed by profits at other locations. It is a rare Thrifty licensee who operates at more than one airport.

As you can see, while it is seductive to say that everyone is free to compete for on airport slots, that is not true as a practical matter. Therefore, imposing a substantial fee on off-airport companies acts as a significant barrier to competition, in an area in which there is no overriding public interest in restricting competition.

If airports are permitted to charge unfair, unreasonable and discriminatory fees, the result in the long term will be a substantial reduction in competition, with the inevitable increase in price, and a lack of choice by the consumer. As a major consumer of car rental services, the federal government will be directly affected by the decrease in competition. For example, on a recent day a walk-up customer at National Airport's car rental counters would have been charged $58.00 (or $57.99) per day at the 2 largest on-airport car rental companies for a compact car. The rate for a U.S. Government employee from those companies was $34.00 per day—a 40% savings. Renting the same class of car from Thrifty, a Government employee would pay $29.00 per day. We believe that without the competition in the car rental industry, 40% discounts would be a thing of the past. We believe there is plenty of car rental business to go around. The airports should not, through their fee structure, decide who gets the business. The marketplace and the choices of consumers should.

We ask your help in turning back these efforts by airports to charge unfair, unreasonable and discriminatory fees. We only do that after concluding that attempting to attack these efforts piecemeal on a local basis is overwhelmingly difficult without the kind of broad policy determination that only the Congress of the United States can make. Your interest in assuring the elimination of improper restrictions on interstate commerce, and in the development and preservation of safety and efficiency in interstate air travel, give you a substantial interest in this subject. We ask you to give us the policy framework which prohibits airports from charging unfair, unreasonable and discriminatory fees so that we will then be able to work with our local airport authorities to develop approaches to the problems they and we face in serving the traveling public.

Once again, I thank you for the opportunity to appear. Thrifty and its licensees stand ready to assist you in any way possible in your deliberation of this question.

Senator FORD. Mr. Hitchcock?

STATEMENT OF CORNISH F. HITCHCOCK, LEGAL DIRECTOR, AVIATION CONSUMER ACTION PROJECT

Mr. HITCHCOCK. Mr. Chairman, this is the first time I have had an opportunity to appear before you since you took over the Chair. And if I can digress for a moment, I want to thank you and your colleagues for the work you have done on some of the safety and consumer issues as well.

With respect to this issue, the other witnesses are right. There has been a real revolution in air travel over the last decade or so. More people are flying than ever before, and more people can afford to fly.

But air travel is not the only area where consumers have been demanding more competition and more consumer choices. Americans taking to the airways, particularly vacation travelers and others on a tight budget, are equally concerned about the cost they will encounter when they get there.

Take, for example, a family of four planning to spend a week seeing the Nation's capital. They are concerned not only about the price of airline tickets, but other expenses as well. Where can they find a reasonably priced hotel room, and how much is a rental car going to cost? For people traveling at their own expense, these are serious issues. After all, no one who is budget-conscious wants to take the money that is saved by using a heavily restricted, non- refundable, deep discount ticket and spend it all back at the Avis or the Hertz counter at the airport. Thus, it should come as no surprise that the growth in air travel has been accompanied by the parallel growth you have seen in the rental car business as well.

Back in the mid-1970s there was a virtual monopoly by the Big Three at airports. They had 96 percent of the market. The Federal Trade Commission looked at it and came out with a consent decree.

The companies agreed to cease efforts of price fixing to try to monopolize the business and to hinder operations of off-airport competitors.

There is one sentence in there that I think is important. The FTC said, and I quote, "American consumers have been forced to pay substantially higher prices for the rental of passenger automobiles than they would have had to pay absent respondents"—the rental car companies—"acts and practices."

This coincided with the beginning of the deregulation movement, and you saw a lot of new companies and companies that were already in existence getting a larger share of the market and more prominence in the public mind. The tradeoff has been between convenience and saving money in terms of rental.

And that is the key point, convenience, that the other witnesses have talk about. It may be tempting to think that all rental car companies are pretty much alike, but in many instances you are really dealing with two types of service. We talk in the airline business about scheduled versus charter, the different costs, different types of service, and there are some differences here too.

If you are dealing with an on-airport operator, you can walk up to the counter, you can choose between them if one does not have the kind of car you want. There also may be a close-in parking lot, more frequent bus service, express check-in. For some airlines you can get your baggage check-in and your tickets at the same time you return your car. But if you are dealing with an off-airport operator, you don't have these amenities or you may not have them. You may have to look through the airport concourse to find out where the company is. You may have to wait until the bus comes around, and it may be longer. The ride out to the off-airport parking lot may take longer, and there may be more lines of people waiting for their car.

That is not for everybody. It is not for people who are on a tight schedule, who need to get out of the airport quickly. But there is a tradeoff in terms of the convenience, and if people want that kind of service, in our view they should not be penalized for it.

Now, that brings me to the core issue before the committee this morning, and that is the practice of levying of gross receipts tax on-airport as well as off-airport operators to the same extent, the same rate. It has the effect of taxing consumers who are trying to stretch a dollar and who are willing to give up convenience of renting a car right there on the airport. Taxing off-airport operators at the same rate as the on-airport operators increases the off-airport people's cost of doing business. And that is going to be passed on to the consumers, and it may cause some operators to decide it is not worth it. The end result could be fewer or no clear choices based on price among the businesses that are serving passengers, and we think that would be unfortunate.

If the operators who are taxing at the same rates are unwilling to remedy the situation, Congress should be specifying that the airport authorities cannot levy the charges on these off-airport facilities unless they are fair, reasonable and nondiscriminatory and a little more closely tailored to the uses that are being made.

We have talked a little bit about the recent Sarasota decision, and let me comment on that very briefly. What the court there did was simply say that the decision was not so irrational or not so wildly egregious that a Federal Court would overturn the judgment of another branch of government. It reflects the limited role that Federal courts have in our society.

And I should also add as one who works in this area apart from aviation those types of challenges to economic regulations are very difficult. The Supreme Court has said that the tax area is one where Congress and other branches of government have a lot of discretion to engage in that kind of line-drawing, and courts are very reluctant to overturn those authorities.

So, the point that I would make about the Sarasota Airport decision is that with respect to the practice that was being challenged there, the court was saying that it may not be so wildly egregious that we are going to substitute our judgment for that of the airport authority. But it certainly leaves open the question for Congress to decide if it makes good public policy or whether something else might be preferable.

That concludes my remarks. Thank you.

[The statement follows:]

STATEMENT OF CORNISH F. HITCHCOCK, LEGAL DIRECTOR, AVIATION CONSUMER ACTION PROJECT

Mr. Chairman, members of the Subcommittee: On behalf of the Aviation Consumer Action Project (ACAP), I appreciate the opportunity to testify here this morning. I would note for the record that ACAP is the only non-profit consumer group working full-time on aviation issues and has done so since its founding by Ralph Nader in 1971.

We are concerned about recent efforts by some airports to charge unreasonable or discriminatory access fees, a move which would be harmful to airline passengers interested in having more choice and competition when they travel. Absent a change in policy by these airports, Congress should enact legislation to assure that cost-conscious consumers are not penalized.

Let me make a few preliminary comments to put the issue in context.

Over the past decade, there has been a revolution in air travel in this country. The number of passengers has nearly doubled since Congress passed the Airline Deregulation Act of 1978. Air transportation has become more affordable to more Americans, and more people are flying now than ever before. While this surge in demand has caused some strains on the system—which this Committee is addressing in other legislation—the Deregulation Act has been good to consumers.

But air travel is not the only area where consumers have been demanding more competition and more consumer choice. Americans taking to the airways, particularly vacation travellers and others on a tight budget, are equally concerned about the costs they will encounter when they get there.

Take, for example, the family of four planning to spend a week seeing the Nation's Capital. They are concerned not only about the price of airline tickets, but other expenses as well. Where can they find a reasonably priced hotel room? How much will a rental car cost?

For people travelling at their own expense, these are serious questions. After all, no budget-conscious traveller wants to take the money saved by using a heavily restricted, nonrefundable, deep discount ticket—and spend it all at the Hertz or Avis counter at the airport. Thus, it should come as no surprise that the recent in growth in air travel has been accompanied by a parallel growth among rental car companies, particularly those emphasizing service to budget-minded consumers.

Back in the mid-1970s, the "Big Three"—Hertz, Avis and National—held a virtual strangle hold on airport locations and controlled 96 percent of the market. This situation attracted the attention of the Federal Trade Commission, which in 1976 entered into a consent decree with these companies. Under the agreement, the Big Three agreed to cease efforts to fix prices, to monopolize the on-airport rental car market and to hinder the operations of off-airport competitors.

Significantly for today's hearing, the FTC order noted that "American consumers have been forced to pay substantially higher prices for the rental of passenger automobiles than they would have had to pay absent respondents' acts and practices."

With the entry of that order, and about the same time that economic deregulation of the airline industry started to take off, consumers began to see concrete changes in the rental car business as well. No longer were many airports the sole preserve of Hertz, Avis and National. Other companies with names such as Budget and Dollar began to open airport booths in a big way. In addition, as travellers read the travel sections of their newspapers or literature provided by travel agents, they noticed advertisements for off-airport rental car companies with names such as Alamo, General and Thrifty. These new businesses have met the demand for budget-conscious travellers, and they thrive by offering services at rates below those of on-airport businesses, often by as much as 20 to 30 percent.

The trade-off for these savings is less convenience, and that is the critical point. It may be tempting to think that all rental car companies are pretty much alike, but from a consumer's standpoint, we are often dealing with two different products, depending on whether the consumer is dealing with an on-airport company or an off-airport company. Consumers using on-airport companies are receiving some valuable conveniences that may not be offered to consumers using off-airport sites, such as:

The ability to walk up to a airport counter to rent a car and to choose between several companies located a few feet apart from each other;

A close-in parking lot where the rental cars are stored, thus limiting time spent getting out of the airport;

More frequent bus service to that lot, which also reduces waiting time;

Express check-in and billing procedures; and

For passengers returning their car and taking a flight home, baggage check-in and issuance of airline boarding passes.

By contrast, customers who prefer off-airport vendors may have none of these amenities. They may have to search through the airport concourse to find the courtesy telephone line which they use to call the rental car company to pick them up; the van which retrieves them may not be dispatched until there are enough passengers to be picked up; the ride to the automobile parking lot may take longer; and when they get there, they may face lines of other passengers also waiting for their cars. Obviously, this type of service is not for everyone, but for passengers who are willing to forego convenience and amenities in return for a break on the price, that choice should not be denied or limited.

This beings me to the core issue before the Committee, and that is the practice of some airport operators to charge off-airport businesses the same gross receipts tax that is levied on the on-airport operators. If airports are permitted to assess taxes in this manner, they would clearly increase the cost of doing business for off-airport businesses. In turn, this could eliminate or substantially reduce the savings that off-airport businesses now pass on to their customers. The end result would be fewer or no clear choices, based on price, among businesses serving airline passengers, and that would be unfortunate.

What should be done about this problem? In the course of researching this issue, I was struck by the comments in the House Appropriations Committee's Report on the FY 1985 budget for the Department of Transportation, which ordered the Federal Aviation Administration to undertake a study of this issue (H.R. Rep. No. 859, 98th Cong., 2d Sess. (1984)). The Report recognized that under 49 U.S.C. § 1513, airports may charge reasonable and non-discriminatory user fees, adding:

"Gross receipts fees on non-tenant service providers may violate this provision if they do not bear a reasonable relationship to the actual use of the airport roads and ramps by a nontenant user. In contrast, a clearly permissible user fee is one which is imposed by an airport authority to cover operating and maintenance costs attributable to actual use of such roads and ramps by non-tenant service providers."

The FAA study which responded to this Report stated (at pp. 3–4) that "imposing such fees would violate the statute," but it read section 1513 as not applying to such non-tenant services, even though the statute covers both direct *and* indirect fees to be levied on air travellers or air commerce.

While lawyers may quibble about the accuracy of this interpretation, the Committee need not immerse itself in that debate. The key point is that if the Committee should agree with this position, it could pass legislation specifying that airport authorities cannot levy charges affecting air passengers using off-airport facilities, unless these charges are fair, reasonable and non-discriminatory, as well as more clearly tailored to the costs incurred by airports making their facilities available to these concerns.

In making these points, I am aware of the recent 11th Circuit case in *Alamo Rent-a-Car* v. *Sarasota-Manatee Airport Authority,* where off-airport rental car company unsuccessfully challenged a ten percent gross receipts tax at Sarasota Airport. Although the trial court struck down the tax as a violation of the Equal Protection Clause, the court of appeals reversed that ruling and upheld the tax.

The court of appeals suggested that if Alamo and other off-airport operators wanted the benefits afforded the on-airport operators, they can simply bid for the franchise when the current contracts expire. That reasoning ignores the fact that for many consumers, the on- and off-airport operators are offering two different types of service. It is a mistake to assume (as the court of appeals did) that all rental car companies are alike.

The court of appeals decision cannot be regarded as the last word on this subject. The court did not decide—nor was it asked to decide—whether the gross receipts tax made sense on policy grounds. Rather, the court's task was only to decide whether the tax was minimally "rational" or "at least debatable" as a way of achieving the airport's stated goals, even though there might be better or less discriminatory ways of achieving those ends.

Thus, all the court of appeals decided was that the Sarasota airport tax was not so wildly egregious or discriminatory that a federal court should invalidate this tax as a violation of the Fourteenth Amendment. That Alamo decision is simply a recognition of the limited role of federal courts in our system of government. The case is hardly an endorsement of this policy regarding gross receipts taxes, and it certainly does not mean that Congress is barred from examining this issue and making its own judgment about what is good public in this area.

I should add that constitutional challenges to state and local taxes of this sort are very difficult to win, and I speak as a lawyer who regularly litigates in this area and has successfully argued several equal protecion cases in the U.S. Supreme Court, as well as lower courts. The Supreme Court has emphasized that legislative bodies have enormous discretion when it comes to making distinctions between which groups will pay how much in taxes, *Regan* v. *Taxation With Representation of Washington,* 461 U.S. 540 (1983). Indeed, about the only time that a taxpayer can win an Equal Protection case is when the tax discriminates in some manner that may be forbidden under another provision of the Constitution, *e.g.*, a state law discriminates against citizens of other states. *See American Trucking Ass'ns* v. *Scheiner,* 107 S. Ct. 2829 (1987); *Williams* v. *Vermont,* 472 U.S. 14 (1985); *Metropolitan Life Ins. Co.* v. *Ward,* 470 U.S. 274 (1985).

In closing, we understand and respect the need for airport operators to earn enough money to operate economically, in order to provide consumers with the important services they do provide. Nonetheless, measures designed to raise revenue should not operate in a manner than limits competition or consumer choice, as do the gross receipts taxes of the sort now being imposed.

Thank you. I will be happy to respond to your questions.

Senator FORD. Thank you, Mr. Hitchcock.

We have been joined by Senator McCain. Senator, do you have any opening remarks or anything you would like——

Senator MCCAIN. No.

Senator FORD. Fine. I wanted to give you that opportunity.

Mr. Shailer, you and Mr. Lobeck argue that Congress should intervene legislatively because this is an issue affecting interstate commerce. Yet, on the other hand, the airports argue that this is a local issue, that Congress should not get into it at all. And we have to make a decision on who is right.

I make decisions every day. Some of them I like the way I voted. Some other times I am not really pleased with the way I voted. There is something about my makeup that causes me to say, if a fellow thinks he is not getting a fair share in competition, he wants to come up here. If he loses in court, the first thing you do is run to D.C. and see if you can't get a bill passed to offset the court's decision. That is nothing new. It happens up here weekly.

How can we in Congress decide which side to believe? You are talking about an excessive fee. The airports are talking about how they have the responsibility to the community because a bond issue was floated, airport trust fund money was used, and their responsibility is to see that the airport at least breaks even and gives the efficient service to its passengers. Efficiency I think, Mr. Lobeck, is what you referred to in financing, as well as to the traveling public. So, how do we in Congress decide? How do we tell the fellow down there to operate his business? How do we tell you how you ought to operate your business? You are saying we want to operate your business differently than it is now. You want us to say so. You want us to tell the airports they have to operate their business differently. There is a lot of gray area here I would like for you to help me clear up.

Now, how can we in Congress decide which side is right? Both of you can take a piece of that. Just don't take too long.

Mr. **Shailer**. Mr. Chairman, the transportation of the traveler off the airport at the completion of his trip is every bit as much a part of that interstate air commerce travel as is the beginning of the trip when he arrives at the airport. It is very clear that as you brought him into the airport by the plane, he is engaged in that interstate commerce. Leaving that hub when he lands is every bit as much a part. It cannot be done locally, Mr. Chairman, because the airports have shown a tendency—and that's the very reason we are here—a tendency to want to impose a protective fee. And I don't recall whether it was the particular——

Senator **Ford**. What do you mean by a "protective" fee?

Mr. **Shailer**. All right, sir. Let me explain that to you.

Senator **Ford**. Let's get a little nomenclature into this.

Mr. **Shailer**. All right. That is not my word, or perhaps it was mine as confirmed by the airports in the last of the negotiating sessions, you may recall, in all of the three prior sessions the airports never came forward with any compromise proposal of any kind—they stonewalled us. They finally came out of the woodwork the last time and said what they were really interested in was a protective fee. What they wanted was to be able to impose a gross receipts fee because it would be a protective fee. It would protect them from the possible departure from the airport of their present on-airport concessionaires.

The argument was that because of the off-airport car rental competition, that if they didn't do something to really nail that competition in its pocketbook, that Hertz and the Avis and whatnot might seriously consider moving off-airport. Alamo, Mr. Chairman, is on-airport in 9 of our 71 locations and soon to be 11 of our 73 forthcoming locations.

They finally admitted that what they wanted was a protective fee. It had nothing to do with raising revenues. It had nothing to do with a fair and reasonable user fee. It had solely to do with a protective fee. And those were their words at a public hearing, and they finally admitted it. And I submit to you, Mr. Chairman, that to try and solve it on a local basis with that kind of attitude is kind of like Little Red Riding Hood going to the wolf.

Senator **Ford**. Well, I understand that she carried lunch also.

Mr. **Shailer**. We have gone with our lunch to many of these airports and paid regularly and are willing to do so, Mr. Chairman.

Senator **Ford**. I understand that. I understand that. But when an airport is built and a bond issue is made, there is a repayment of that. I don't know whether it is city-county airport. It could be, or it could be one entity or the other. Once they sell the bonds, the management of that airport I suspect with the efficiency Mr. Lobeck emphasized that they were to at least be able to make their payments as it related to the cost and the indebtedness of the city or county or both.

When you get to that point, if there is a legislative remedy that reduces their efficiency as it relates to income, I can understand why they want some sort of protection. If I was the manager of that airport and I had the responsibility, I would not want this Congress or anyone else to take away that ability at that certain level.

Now, that is the first time I have gotten into protective, but that is the first thing that hits me. I think the airports want to have a little protection. Otherwise, they are going to have to look for other income.

Mr. SHAILER. Mr. Chairman, I agree with you, and they should. Our point is that they should only be able to do it in a fair, reasonable and nondiscriminatory fashion. Now, Mr. Chairman, I don't mean by that——

Senator FORD. That gets back to the eye of the beholder again.

Mr. SHAILER. No, sir. With due respect, it does not because we already have ample precedent for those very terms in the interpretation of section 1513, which does not apply to the land side and, in the cases dealing with the federally funded road and bridge taxes. Those fees have to be imposed fairly and reasonably and without unjust discrimination.

Senator FORD. What is fair and reasonable in gasoline tax?

Mr. SHAILER. Fair and reasonable means—and without unjust discrimination, Mr. Chairman——

Senator FORD. Everybody pays the same?

Mr. SHAILER. No. Whatever they want to impose as long as it bears some reasonable relationship to their costs and their needs, and as long as it is applied without unjust discrimination to the same types of users. That's all.

Senator FORD. Then the airport and airway trust fund—8 percent discriminates because we have got a $6 billion surplus. We are not spending it. That is unjust in my opinion. I have been preaching that for some time.

Mr. SHAILER. I would agree that it ought to be spent, and maybe the airports would not come trying to reach in the pockets of off-airport businesses starting with rent-a-cars, and then the hotels and motels would be next, and the——

Senator FORD. Well, that may be true, but you are going to have to change the attitude of the administration and probably change the attitude of Congress because the $6 billion offsets the deficit. They can pay more welfare. They can send more block grants. They can do other things. And you sit there and don't have the facilities to have an efficient operation.

Mr. SHAILER. I agree, Mr. Chairman. The problem though is that in the interim, until that is done, they should not be allowed to reach in the pockets arbitrarily of one industry. All we are saying, Mr. Chairman, is that there be a national policy, a national standard, if you will, which simply says that whatever fees you impose down there in airport X or Y or Z, that you treat users fairly and equally. Don't single out one because they happen to compete with an on-airport concessionaire. Raise the money to pay for your airports by doing it to all providers.

You know, the statement is often made, well, you wouldn't be there, Alamo and the rest of the off-airports, without the airport. I mean, why do you locate near the airport? You wouldn't be there without the airport. Mr. Chairman, that is absolutely true. We would not be there without the airport, but neither would every convention center in every city be there without the airport. Neither would any hotel on a beach be there without the airport. It is the hub through which everything travels. IBM's industrial parks are near——

Senator **Ford**. You are getting into another situation, as well. There is a hotel tax. They charge tax on the consumer who flies on in on an airplane, gets in a rent-a-car, goes downtown, and stays in a hotel. They pay a pretty heavy tax. So, you know, there is nothing free about that. That goes into the city's pocket. And if the airport is short, I suspect some of that general revenue will go out there to pay the airport.

Mr. **Shailer**. Mr. Chairman, my understanding of that is that most of those taxes came about for the purpose of raising tourism related revenue to induce more traffic and more travel into that hotel, and was generally backed by the Hotel and Restaurant Association. And that's——

Senator **Ford**. Of that community, and so you would have more customers and so the tax on the hotel operators—on the consumers means that you will have more business because if they get more people through tourism. That's an absolute direct help to you financially.

Mr. **Shailer**. Likewise to the airport's partners on-airport.

Senator **Ford**. I understand that.

Mr. **Shailer**. Concessionaires. I respectfully suggest that while I agree with you, that that is a different issue.

Senator **Ford**. Do you want to get into this?

Mr. **Lobeck**. Two comments.

Senator **Ford**. Listen, if you don't have fun in this place, you might as well get out.

Mr. **Lobeck**. I understand.

Senator **Ford**. So, we are going to have fun while we are here, and we are not going to get mad at each other, but we may get a little warm and excited before it is over with.

Mr. **Lobeck**. That is good. This is my first trip here. I want to have fun.

Senator **Ford**. Well, that's after the hearing.

Mr. **Lobeck**. With respect to why this should be a Federal issue as opposed to a local issue, you know, I hate to say this, but our system is a failure. The legal system has failed. The small businessman, which is a typical Thrifty licensee, cannot afford a lawsuit today. A cheap lawsuit is 50,000 bucks. And if you are going to take on a municipality in the court, you better budget a quarter of a million dollars. And I don't think I got two licensees in the system that could afford that. They will be out of business before that. Now, that is why my comment relative to it being a Federal issue.

As far as the airport's money problem is concerned, maybe it is a much broader issue than we attempted to touch on here. They got money problems because there are more people going through the airports today. And the airports have had to grow. And they are saying that their revenue base has not grown in proportion to the deplaning passengers. That's their complaint. That's not our fault.

You know, airport landing fees are based on the weight of the airplane in most places I believe. It doesn't have a darned thing to do with the number of people that get off.

Maybe their attitude towards how they raise their revenues and how their costs are proportioned needs to be examined. You don't have to look just at us.

Senator FORD. Well, that's very difficult to write that into legislation.

Mr. LOBECK. I understand.

Senator FORD. Now, Mr. Shailer, you seem to argue, and Mr. Lobeck too, that if a gross receipts fee were imposed at an airport, your firm would lose its cost advantage over an on-airport rental company.

Is this the only cost advantage your two firms enjoy?

Mr. LOBECK. It's the major one. It's the major one.

Mr. SHAILER. If I understand the question correctly, there is a cost advantage very definitely in terms of off-airport. And yes, many businesses would lose their cost advantage.

But it is a twofold thing really, Mr. Chairman, not just——

Senator FORD. Well, the question I asked is, is this the only cost advantage you now enjoy.

Mr. SHAILER. I am not sure I am following the——

Mr. LOBECK. Well, I think I——

Senator FORD. I think Mr. Lobeck does.

Mr. LOBECK. Unfortunately, our industry is a privately held industry for the most part or we are subsidiaries of major companies—the big guys are. And the truth of the matter is I don't think everybody really knows what the other guy's costs are. But our major cost advantage is the lack of a concession fee at Thrifty. In other areas our costs are equal to or maybe even sometimes greater than the big guys.

Mr. SHAILER. Mr. Chairman, I might add that counterbalancing that, however, is that in most of these airport concessions, land on airport goes with it at very, very cheap rates. It's kind of the sweetheart part of the deal. The "big up" is paying that 10 percent commission. When you step up and voluntarily bid and become a concessionaire, you agree to pay 10 percent of your gross receipts, most of your gross receipts, the basic components of them, your time and mileage and things of that nature.

And then in addition, in many, many—most of the airports you also get land on-airport at very, very cheap rates, 10, 15, 20 cents a square foot a year. The off-airports, while we may have some cost advantage by virtue of not paying a gross receipts fee, on the other hand, pay very substantial land costs—at fair market value in buying land outside and near the airport in arm's length transactions.

Senator FORD. Or you lease land.

Mr. SHAILER. Or lease, but likewise in arm's length transactions in the private sector.

Senator **Ford**. You know, when we started this discussion, you told me about one court case in Louisiana, another case in Florida, and one went one way and one went the other.

Mr. **Shailer**. Now they have both gone——

Senator **Ford**. Now they are both the same way.

Mr. **Shailer**. Yes, sir.

Senator **Ford**. And both courts have said that the fee system that is proposed by the airports is constitutional.

Mr. **Shailer**. Yes, sir, they have.

Senator **Ford**. Okay. So, now since the courts have said no to you, you are here to do what the normal citizen does, come to the Congress to see if we can't give you some relief.

Mr. **Shailer**. You mentioned that earlier, Mr. Chairman. May I correct one thing? If you will recall, we have been here and when we first started coming here, the Sarasota case that was just overturned was a case in our favor. We won that at the trial court and still came to Congress. So, we were not coming up here asking relief, running up here after we had lost a lawsuit as you commented earlier.

Senator **Ford**. You had smart lawyers telling you what was going to happen.

I'll admit that's a smart lawyer of yours. I want you to know. He's back there. I see him.

Mr. **Shailer**. Which one? We have got a whole group of them back there, Mr. Chairman. I wish you had told them at that time. There might have been a lot of fees saved in litigating that case.

Senator **Ford**. I just want to tell you that outside of AT&T, you have hired more lawyers in this town than any group I have ever known.

Mr. **Shailer**. Well, Mr. Chairman, we are a very large coalition.

Senator **Ford**. Yes, I understand that.

But Mr. Hitchcock, let's get away from these two fellows over there. They may get the best of me. So, when I am even, I want to get out.

If the gross receipts fees were prohibited, airports around the country would need to generate revenue from other sources. And wouldn't the consumer ultimately pay for these revenues however it is charged?

Mr. **Hitchcock**. If the gross receipts tax with respect to the off-airport operators were knocked out? I don't think that they are saying that the airport would not be free to charge them something based on the cost or the burdens or the strains that they are putting on the airport system in terms of running the vans through there.

The problem—and I have been thinking about the question you asked to the other witnesses about differing positions—I think the problem here is that the airports look at this from the standpoint of what value is offered to the operators, and they say that it is very, very valuable to the rental car companies and not as valuable to the hotels, and they are going to, therefore, charge a lot more. Whereas, from the rental companies' standpoint, I guess from a consumer standpoint as well, more focus is on the cost of the service rather than the value of it. I mean, how much does it really cost to provide that?

And that provides a philosophical difference between the two parties that I think is may be difficult to bridge in this case. You are right. It is difficult to try to write legislation that goes down the middle or tries to work things out.

Let me answer the other question you asked the other witnesses about why should Congress get involved. And I think the answer is, to put it a little differently, the Federal Government has been involved before. I mentioned the FTC back in 1976 and that is before people started getting upset about the FTC doing other things.

The FTC said there is a problem here.

Senator **Ford**. Don't throw the red flag of the FTC in front of me now.

Mr. **Hitchcock**. Well, yes, I knew I might be getting into trouble there, and that is all I was going to say about that.

Senator **Ford**. You are already getting pretty deep.

Mr. **Hitchcock**. Okay.

But there was a monopoly situation. You had three companies controlling the market. It was very difficult for others to get in in a number of airports, and consumers were being charged higher prices. And the Federal Government, in the form of an agency rather than Congress, said that is wrong. We need to do something about it to even the scales a little more evenly.

And I think that is what we are talking about at least philosophically here too is trying to find some middle ground where you have a tax that treats people off the airport as if they have all the advantages of being on the airport. Whatever the correct fee or a fairer fee might be, it does not seem right to be assessing them the same, particularly when it is out of proportion to the amount of actual use. If you had a situation where the off-airport operators started coming in in great numbers and putting more of a strain on the system, that would be an argument for perhaps raising the rates as far as all off-airport operators were concerned. But I think there is flexibility there that could be dealt with—a system that could deal with the concerns you have raised.

That is sort of a long-winded answer, but——

Mr. **Shailer**. Mr. Chairman, may I add something that I didn't complete an answer to when you were talking about the bonds, the bond issues that the airports are floating and the need to service and amortize those bonds?

There seems to be some suggestion about a loss of revenue that the off-airport rent-a-car companies are causing this great loss of revenue, and that the airports can't service——

Senator **Ford**. You are just reading that in that because you are sensitive about it.

Mr. **Shailer**. All right.

Senator **Ford**. The only thing I am saying is that the operation of the airport and that individual saddled with that and the board that has been appointed is to pay whatever that monthly fee might be or payment might be or annual payment might be. They are responsible for the efficient operation of the airport, and that means dollars. So, it is a mix of the income of the airport. That is all I was getting at.

Mr. **Shailer**. I was going to say I don't believe they have ever said or suggested—and I don't think there are any statistics to support it—throughout the task force negotiating session that there has been some drop in airport revenues because of the off-airport rent-a-car companies.

Senator **Ford**. No.

Mr. **Shailer**. And that just isn't the case at all.

Senator **Ford**. No. You are just complaining because they are charging you too much, or going to charge you too much, or have the opportunity to charge you too much. That is the reason we got into the argument. And that is the reason we are here today.

Mr. **Shailer**. Not too much. Too much becomes whatever they want to charge as long as they charge it fairly. That's all across the board.

Senator **Ford**. Well, it goes back to the eye of the beholder. And we can leave it up to each airport manager, and then that would be a local decision. You don't want that.

Mr. **Shailer**. No. We do want that, Mr. Chairman. We want that, but simply with a minimum national standard which says it has to be fair, reasonable and without unjust discrimination. That is all we ask.

Senator **Ford**. And you try to get all three of those settled in a court, and they find against you.

Mr. **Shailer**. No. They have not found against us on those issues, Mr. Chairman. They have said there is no constitutional right under the equal protection clause to stop airports from imposing arbitrary gross receipts fees and singling out one industry. The court did not say that this is a good practice, that this is a fair practice, that this is a moral practice, that this is a good, free enterprise, sound business practice. All they said was that under the Fourteenth Amendment to the Constitution, that the equal protection clause does not afford and accord Alamo and Thrifty and the rest of the off-airports any protection. They didn't say there was anything good or just or moral about it, Mr. Chairman. They didn't get to the merits of it.

We need statutory protection on that, Mr. Chairman, just as you did after the courts upheld the head taxes that 44 different cities imposed years back. And the court said that does not violate the Constitution either. So, the Congress stepped in and solved the problem.

Senator **Ford**. You did a good job in front of the mirror this morning. I applaud you.

Mr. **Shailer**. Thank you, Mr. Chairman.

Senator **Ford**. Senator Kassebaum?

Senator **Kassebaum**. In trying to understand this Mr. Shailer, and hearing you say "free enterprise," I really wondered then why we are being asked to intervene in what seems to me really to be essentially a business arrangement between the rental car companies and the airport operators.

Mr. **Shailer**. For this reason, Senator Kassebaum. You have to understand that the arrangement, the partnership, if you will, between the airports and the on-airport concessionaires, predominantly the Big Four that we speak of, Hertz, Avis, National and Budget—Alamo is smaller than they are. We are on-airport in a few places, but they are the traditional, what we talk of as the Big

Four, the on-airport rent-a-car companies in almost every airport around the country.

You have to understand—and I believe you are familiar with how this comes about. The way the airport bids are conducted is the airport concessions in the airport business go out for bid every 5 years. Sometimes it is 7 years. Sometimes it is 10 years. And the only way you can become one of the five or six—it is usually five or six—concessionaires, is to win the bidding. The specs of their bid say that the way you become a successful bidder is by making the highest minimum annual guarantee against a percentage of gross.

Now, what this means, Senator Kassebaum, is that for all but the big boys, for the little operator in a community, the thousands of rent-a-car companies that just operate one or two locations and have a hundred or 200 or 300 cars as opposed to the big companies that have 50,000, 100,000, 150,000, a big national corporation—for those little people, they just cannot step up and make a high enough minimum bid to compete with Alamo, Avis and National to bid to go on-airport. So, they as a practical matter—while they legally have the right to bid, as a practical matter, they can never become a successful on-airport bidder.

Now, what happens, therefore, is that you have this perpetuation year in and year out of the big guys as the on-airport concessionaires. The little people can never become concessionaires even if they want to. Now the airports want to impose a protective fee to take a percentage of gross receipts from those off-airport people to protect, as they have said, the on-airport ones, but there is no opportunity for the others to first become part of the protected.

Let them open up the airports. Let them let everybody on without a minimum guarantee, every responsible business come on the airport as a predicate to imposing the gross receipts fee, and I say they can have it. We would be happy to have them have it.

Senator **Ford**. If you are going to start that, we will ask you to leave, and we have the ability here to do that. And that is the emotion I was talking about earlier. And I intend to maintain order in this room.

Senator?

Senator **Kassebaum**. I understand that. What I am saying is you can individually negotiate, can you not, with Kansas City, KCI, for instance? You cannot?

Mr. **Shailer**. No, Senator. We are closed out until the bids open up again whenever it is, 3 years from now, or 4 years from now or 10.

Senator **Kassebaum**. All right. But at that point you can negotiate.

Mr. **Shailer**. We have to bid. It goes to public bidding, and we have to make a high enough minimum guarantee to become one of the successful bidders.

Senator **Ford**. Senator, this is become an Alamo statement here today. Mr. Lobeck has been trying awful hard to get into this statement. I would like for them—he's Thrifty, not Alamo.

Mr. **Lobeck**. Thank you.

Using Kansas City as an example—and I don't know the exact numbers, but typically Kansas City would say there is a bid coming up for the airport for 5 years or 7 years. We will accept bids from anybody who is qualified. They put out a list of rather stringent qualifications, including financial qualifications, some of which are for the safety of the air traveler, some of which you can take to task as to why they are there. But they also say we will accept any bid so long as you bid a minimum of $100,000 a year, as an example, or 10 percent of your gross receipts, whichever is higher. And we have got operators that only gross $250,000 a year, and they cannot afford to pay 40 percent of their gross receipts to the airport. That is absurd.

Senator **Kassebaum**. But what I am suggesting is that you are free to decide what your relationship to the airport will be, and to negotiate the terms of that agreement.

Mr. **Lobeck**. No, that is true. But I will give——

Senator **Kassebaum**. And so, you offer an advantage to the customer by offering a lower rental fee. You have a certain advantage, or I would guess this is the case you are making, to being the type of company you are. And if I am looking for a rental car, basically I choose whether I am going to pay a little more and go to a company that is right there when I get off the flight, or whether I'm willing to go off further to obtain a better price.

It would seem to me that your services are ones that any airport operator would be happy to have, and that you have a certain advantage, and you should be able to negotiate for the type of fee you are going to be paying.

Mr. **Lobeck**. We have found that negotiating with the airport authorities has not been a successful alternative. They dictate what they are going to do, and you either live with it or you fight it.

They tried to compromise negotiations here and they failed. And I think there was give and take on both sides. I am sorry I wasn't present at those meetings. But I think there was legitimate give and take, but only to the point where the airports said, no, we want a protective fee.

Senator **Kassebaum**. Well, it seems to me that we could start down a path where we are going to then involve ourselves with hotels, as you mentioned, and every other sort of off-airport operation serving an airport. And we are going to have everybody else wanting then for us to designate what is fair and equal.

Mr. **Shailer**. May I address that, Bill, please?

Senator, I think you will—that will indeed happen. Next year you will have them all back here if something isn't done about it now. This legislation will set the national parameters. If it is not done, the next thing is the hotels, the motels, the park and flies are going to get hit.

They have said it. West Palm Beach, which enacted an ordinance right in the face of the Sarasota case, when we had our trial court successful ruling, before the appeal came out, was quoted verbatim in saying the hotels and the motels are going to be next.

Well, a fair and reasonable user fee is all right on whatever it may be. Airports—any users of the airport. We want to pay our fair share of it. We just don't want them to reach into our pocket and take 10 percent away from us just because that is what they are getting from the on-airport people.

And you said it, Senator, just a second ago yourself. You pointed out the substantial advantage of being an on-airport concessionaire.

So, if someone wants to make as a business judgment in the rent-a-car business a choice of whether he wants to voluntarily step up, make a high enough bid, if he can afford to, become a successful concessionaire, and voluntarily pay 10 percent, he does so because of the substantial advantage that he gets as being an on-airport concessionaire.

It is not fair to say to those that either do not have the wherewithal to do that or who choose to stay off-airport that they who don't get the same advantages nonetheless have to pay the same amounts to the airports. That is just immoral.

Senator KASSEBAUM. Well, I can see many people wanting to come to Congress to ask us to legislate fair and equal treatment. As the Chairman has pointed out, we already get these requests frequently. But it is a fine line that we are being asked to draw here in intruding into what is essentially a private sector business arrangement. That's all.

Mr. HITCHCOCK. Senator, could I add a thought on that?

Senator KASSEBAUM. Mr. Hitchcock?

Mr. HITCHCOCK. When I first got involved in this issue, I had the same question that you do, why has this not been solved or resolved between the operators and the rental car companies at the local level. Why is the practice taking place?

And in talking to people on both sides and in thinking about the issue, I guess the most satisfactory answer I have is that the airports have a monopoly. I mean, if you are going to operate an off-airport business, you have to come through the airport. It is needed for your business. And the airport operators have a lot of discretion in terms of charging you to do business.

What you are seeing here, I think in terms of the pricing structure, reflects that. It is just running the price up as high as it can be without necessarily any regard to the cost of the off-airport operators. It is just designed as a revenue raiser.

And when you have got that kind of monopoly, there needs to be some kind of check because you are not going to see it at the local level. The pressure is on the airport operators is to make money to cover the bonds, to cover all the costs. You are just not going to see necessarily through the local political process a countervailing force of people saying, "Wait a minute. What about the off-airport companies?"

I agree with you. It is a difficult area to try to legislate and to draw that kind of line, but it is an issue that is worth looking at and trying to focus on the issues and the fact that the costs do outstrip the actual costs of the service being made available.

Senator KASSEBAUM. Thank you.

Senator FORD. Senator McCain?

Senator MCCAIN. Thank you, Mr. Chairman.

I must say I have some sympathy for the witnesses. And I think that it is in the interests of the American people to see the smaller rental car businesses remain in business. I think a case can be made that the rise of different rental car systems that are represented here today has had an impact in significantly lowering the cost to the consumer of a rental car.

At the same time I am troubled as to some of the arguments that have been made here. For example, Mr. Lobeck, you said the reason why we need Federal legislation is because they can't afford a lawsuit. Well, if that is the criteria, we are going to have a heavy load of legislation before this body because there are a whole lot of people that can't afford a lawsuit.

Mr. Hitchcock I believe said that an argument for us to be involved is because the Federal Government has already been involved. There are some of us who would like to see the Federal Government out of areas that they have already been involved in. And to make an argument that they have already been involved as an argument for further involvement is not one that is very compelling.

I also think a major difficulty that you are facing, which has already been in some degree addressed by the Chairman and Mrs. Kassebaum, is what is your definition of fair and reasonable. You want us to legislate fair and reasonable fees by the airports. Yet, it seems to me that fair and reasonable not only varies, as the Chairman says, in the eye of the beholder, but on a regional basis. And I find it very difficult without a more precise definition of what fair and reasonable is to assess what a fair and reasonable situation would be.

Mr. Shailer, I know you are very eager to respond.

Also, it is not clear to me that the off-airport companies are not paying the same percentage as the on-airport companies are paying. So, go ahead and respond, Mr. Shailer, starting with you. Remember that you want to give Mr. Lobeck an opportunity also.

Mr. SHAILER. I have a tendency, as you can understand, Senator McCain, to get a little excited about the issue. It is not the lawyer in me, but rather the businessman that just gets me so incensed I sometimes lose control. I apologize.

Senator MCCAIN. And I fully understand, Mr. Shailer, that the people here—we are talking about their very livelihood, and I understand the emotion involved in this issue. But I think we can only address it best by trying to be as rational and as calm as possible.

Mr. SHAILER. Absolutely.

The second part of your question or second aspect of it about deals with the off-airports not paying the same percentage as the on-airports and why they shouldn't Senator McCain, let me explain, I think there may be some misunderstanding on this.

There are very substantial advantages and benefits that accrue to on-airport concessionaires. Otherwise, why would any step up and voluntarily agree to pay 10 percent of their gross revenues to government? The advantages are multifold, the most important of which is getting access to what we call the walk-up business, those people who step off an airplane without a reservation.

Alamo's business—well over 90 percent of our business comes from pre-reserved customers, not people who reached an airport and decided that they were going to call us because they saw our nice facility four miles down the road, but rather people who in the middle of winter up in Minnesota or Boston or San Francisco wanted to go down to see Disney World or to the beaches of Fort Lauderdale or down to San Diego or San Antonio, as the case may be. They were our pre-reserved customers. They did not come to us through the airports.

The airports seem to suggest that they have some proprietary interest in those customers, that they created or provided the customers for us. They didn't provide those customers in any way, shape or form. They were our customers who reserved with us a week ago, a month ago, a year ago through a tour operator, through a travel agent, through the airlines, through one of the airline reservation's systems, through our direct 800 number, whatever the case may be.

So, why should we be paying either the same percentage or even a lesser percentage of any kind of arbitrary percentage to the airport when the airport isn't providing us with any of our customer base, when we are prohibited as an off-airport company from soliciting any business? They will arrest us on the airport if we solicit any business there. It is absolutely prohibited. That is their property. In most places they won't give us signage. In most places they won't give us a phone board where our customers could even call us if they wanted to—our pre-reserved customers.

We don't want to take away their business at the airport. We have got our own business that is already coming to us. Their business is growing. Our business is growing. When I say "they," the on-airport concessionaires, and we are one of those sometimes too. We don't want to take that away, Senator McCain.

Senator McCain. Would you address also, Mr. Lobeck, when you respond to the question of how we legislate what is fair and reasonable? I would be glad to—maybe Mr. Lobeck could speak.

Mr. Lobeck. Fair and reasonable—look, the hotels do the same kind of pickup at the airport that we do. They run a van over there, and they pick up a customer. So do the off-airport parking lots.

In many cases the airports have imposed fees based on the number of trips you make to the airport. We add to the traffic. In some cases—I mean, there is an argument that if we were not there, they would be picked up in private passenger cars. And we know that our vans carry an average of about five people per trip, whereas a private passenger car is less than two and a half. Maybe we are helping traffic congestion on that standpoint.

But the other off-airport services—and the airports have charged us access fees. That is fair and reasonable. If you charge us the same thing as you charge a hotel and an off-airport parking operation, that is fair and reasonable. But don't discriminate against us, and that is what is being done now. They want 7 percent of our gross receipts in some of these Florida cities, and they aren't charging a dime to the hotel yet, or a dime to the off-airport parking company yet.

And what happens next year when they start charging the hotel people? The hotel people are going to be here in force then.

They are saying there is a different fee. A man comes to Thrifty and rents a car for one day and pays 23 bucks. They want 7 percent of that. If he comes and rents it for a month, he may pay $400 or $500. They want 7 percent of that. We went to the airport one time and picked up that one man that one time. Is it fair that they get 7 percent of $500 versus 7 percent of $23? We didn't impose any more burden on their facility for the $23 rental than we did for the $600 rental. A fee based on usage is fair and reasonable.

Mr. **Shailer**. Senator McCain, if I could add to that. Interestingly, the Los Angeles Airport is the most recent one to impose a reasonable user fee. They did a very detailed study, determined the costs of the maintenance and operation of their roadsides, did a traffic study. And they just implemented—and it takes effect January 1, 1988—a fee structure which calls for a payment of 32 cents per trip for buses that carry less than 25 passengers and 48 cents per trip for buses that carry 25 or more passengers. That was based on a study to amortize—to repair, replace, maintain those land side operations. That is done in San Francisco. It is done in Dallas. It is done in a number of places where fees are paid.

And whether it is 32 cents or $3.50, it doesn't matter as long as it is reasonable and nondiscriminatory. Courtesy buses drive through, and they are run by rent-a-car companies. They are run by hotels. They are run by amusement parks. They are run by any number of people, all of whom impact on the wear and tear of those airport roadways, the congestions of the roadways and whatnot.

All we are saying is, and a court would say, if we had the language "fair, reasonable and without unjust discrimination," Senator McCain, that is already in the aviation bill. That language is there and applies to the air side aspect of the operation. We are simply asking that that same long-existing, well-interpreted language be carried over so that the land side operators, the off-airport businesses, have standing in the courts the same way that the airlines do for the interpretation of that language of fair, reasonable and unjust discrimination. If we had that, there would not be much litigation at all over it because the issue would be dead in the water finally for the airports.

Senator **McCain**. Well, I have a tendency to think that it would make for a whole lot of litigation because I think people would have a very different viewpoint depending on where they work as to what is fair and reasonable.

But, Mr. Hitchcock, did you want to add anything?

Mr. **Hitchcock**. No. I think the point has been made. Congress in a number of statutes has talked about fair, reasonable, nondiscriminatory, including the provision talked about here, section 1513.

I understand your concern about litigation, but it is a question of how you provide some kind of balance that gives an even opportunity for both people to negotiate. The way it is now, the airport operators have a monopoly. There is not much room to maneuver from the other side in these cases where charges are assessed that are way out of proportion to the actual costs of the burdens being proposed.

Senator **McCain**. Thank you, Mr. Chairman.

Senator **Ford**. Senator Danforth?

Senator **Danforth**. Has any bill been introduced in either the House or the Senate?

Mr. **Shailer**. No, it has not. We have some proposed language, Senator, but in terms of formal introduction, not quite at this juncture.

Senator **Danforth**. If a bill were introduced, should it cover just the rental car business, or should it cover other businesses as well?

Mr. **Shailer**. It should cover other businesses as well. The proposal that we have been discussing and that we laid at the table at the final negotiating session would cover all sorts of off-airport businesses such as rent-a-cars, parking, land side businesses.

Senator **Danforth**. Should it cover hotels?

Mr. **Shailer**. Yes, sir.

Mr. **Lobeck**. Yes.

Senator **Danforth**. Should it cover parking services?

Mr. **Lobeck**. Yes, sir.

Mr. **Shailer**. Yes, sir.

Senator **Danforth**. Should it cover airport limousine services?

Mr. **Lobeck**. To the extent that they are not regulated under some current legislation, yes.

Senator **Danforth**. And should it cover taxis?

Mr. **Lobeck**. I think most of those are currently regulated under some other type of statute. Now, many taxis pay a fee at the airport.

Mr. **Shailer**. We are talking about those that provide courtesy vehicles as a courtesy to their customers.

Senator **Danforth**. You all have thought about this for a long time, and I really haven't. But it is my understanding that not every taxicab that wants to serve an airport can serve an airport. If the Federal Government is going to get into this, should we apply the statute to taxis?

Mr. **Lobeck**. I think the cab industry is subject to regulations today in most municipalities.

Senator **Danforth**. Well, I'm not asking that. I am asking whether we should pass a statute that says that every cab driver who wants to go up to the airport should be able to, on an equal basis, pick up passengers.

Mr. **Shailer**. I don't know, Mr. Chairman, because we have attempted in our proposition to exempt out those businesses that are not operating courtesy vehicles. A taxi obviously derives its revenue for the ride in the cab itself. We just want to pick them up and bring them to their business.

Senator **Danforth**. What is the difference though? I mean, if the issue is competition, why shouldn't we get into the business of saying that any taxi that wants to pick up people at an airport should be able to pick up people at the airport?

Mr. **Shailer**. You mean in terms of saying that an airport can't prohibit or can limit the——

Senator **Danforth**. Your whole point, as I understand it, is that, certain car rental services don't get a fair crack at customers because of the pricing mechanism. Why shouldn't we provide that all taxicabs should have a fair crack at picking up passengers as a matter of Federal law?

Mr. **Shailer**. I don't think we said, Senator, that we were not getting a crack at the pricing—

Senator **Danforth**. Tell me why that doesn't logically follow?

Mr. **Shailer**. Perhaps Congress should look at all manner of access with respect to airports by any and all services of whatever kind or nature in that, indeed, we are talking about people who are traveling in interstate commerce. And maybe you well should, Senator. I haven't really thought through the taxi——

Senator **Danforth**. Logically it is the same proposition though, right? If we are going to get into the business of equal access for car rental companies, we should also for taxis, shouldn't we?

Mr. **Shailer**. Perhaps it is a little—no. It is a little different though, Senator, because the taxi is coming to the airport to get his business there. He waits in line. He doesn't have any pre-reserved customer. He is waiting for a customer to step up, open the door and pay him.

Senator **Danforth**. No. He can be told I'm sorry. You can't come to this airport.

Mr. **Shailer**. Oh, yes. But I am saying the reason we have made a distinction in what——

Senator **Danforth**. He can be shut out altogether. He can be told not only can't you get a courtesy car for your taxi, you can't even do business here. That's not fair, is it?

Mr. **Shailer**. Perhaps that should be addressed also, Senator, with respect to federally funded airports. It may well be that it should be looked at.

If the Senator is getting at the question of whether or not we are regulating all forms of local transportation in a community, no. I think that is a different thing when we are talking about what I believe materially affects interstate commerce and air commerce, the completion of a traveler's trip.

Mr. **Lobeck**. Senator, I may be mistaken on this, but I am under the impression and have, in fact, used cabs and limousine service that are not airport concessionaires. And if you have a prior reservation with that company, the airport can't stop them from coming on their premises to pick you up.

Senator **Danforth**. Well, my understanding is that Joe Dokes, cab driver, who wants to drive out to, say, Lambert in St. Louis, can't do it.

Mr. **Lobeck**. That may be correct. But if Joe Dokes runs a cab company that you particularly like, and you want to reserve his services in advance, you may do that.

Senator **Danforth**. Well, that is not——

Mr. **Lobeck**. Well——

Senator **Danforth**. How would you like to be in that taxi business? Reserved taxi——

Mr. **Lobeck**. Well, there are an awful lot of them in metropolitan New York that do very well today, you know. They are not yellow cabs.

Senator **Danforth**. Well, New York is different.

How about doughnut stands?

Mr. **Lobeck**. If there is a doughnut stand across the street from the airport and they offer a courtesy bus to come over and pick up somebody to take them to the doughnut stand, I think they should be charged a fair and reasonable access fee.

Senator **Danforth**. The question is the right of a doughnut stand to do business. Let's say that Lambert takes the position that we have five doughnut stands at our airport right now, and we don't need a sixth. Should it be able to exclude this entrepreneur who thinks that he has a better doughnut to sell?

Mr. **Shailer**. Sure.

Mr. **Lobeck**. The airports today have been granted immunity from antitrust actions.

Senator **Danforth**. Should they be?

Mr. **Lobeck**. As a practical matter, maybe. They won't let all of us——

Senator **Danforth**. My point is how do you distinguish between what you consider to be an unfair exclusion of competition and what the airport does to a whole lot of other businesses?

Mr. **Lobeck**. Well, if they exclude us, that's fine. We can accept being excluded. What we say they shouldn't do is exclude us and still charge us. That's the problem. Keep us out. That's okay. But charge us? That's wrong.

Mr. **Shailer**. Senator, suppose the doughnut shop right off-airport that offers the $2 doughnut and the on-airport doughnut has gotten up to 10 bucks, and someone who comes in the airport and says, boy, I am not going to have that doughnut. He gets in his car, and the minute he gets off airport property, he stops at the doughnut shop there because the sign says $2 doughnuts. Under the airport's theory, they ought to be hitting that off-airport doughnut shop for 10 percent of its gross revenues.

The courtesy bus doesn't have anything to do with what they are really talking about. It's the stopping and stifling the competition between that off-airport doughnut shop and the on-airport doughnut shop concessionaire. It doesn't matter about how the transportation happened between the two. That's what it is.

Senator **Danforth**. Why is the power to charge you money for doing business more onerous than excluding you from doing business altogether?

Mr. **Lobeck**. They can't exclude us from doing business.

Senator **Danforth**. They can exclude the doughnut guy.

Mr. **Lobeck**. You mean from on-airport. You mean from being on-airport.

Senator **Danforth**. I mean, why is it more onerous to charge a fee for doing business than it is for excluding somebody altogether?

Mr. **Lobeck**. It's the same argument I made a moment ago. You said Joe Dokes' taxi company can't pick up at St. Louis Airport. But suppose Lambert said, okay, Joe Dokes, we are going to charge you 5 percent of your gross receipts because a guy came through our airport and stayed at the Marriott down the street and you picked him up. That's onerous.

Senator **Danforth**. Well, let's assume that that is bad. Why is it any worse than saying you can't do any business at all? I'm sorry. We don't like the cut of your jib.

Mr. **Shailer**. I think there are practical reasons. When you said earlier opening up the airports, that would be ideal in an airport that had the space to say every qualified company can come on. Airports with space limitations can't say, all right, we are going to put up 25 rent-a-car counters. There is a rational basis to say they think they are going to limit our on-airport concessionaires to four or five or six. I think there can be a rational basis for an airport to say that.

But what is not rational is to say after we have determined there will be four, five or six, now we are going to say if you do not become one of the successful four, five or six, that we are going to take money out of your pocket percentage-wise off-airport.

Senator **Danforth**. So, your argument is limited to people who sort of drive through the airport rather than people who have to set up stands there.

Mr. **Shailer**. Yes, sir.

Senator **Danforth**. Okay, so it would apply. Your argument does apply to taxis.

Mr. **Shailer**. Except——

Senator **Danforth**. It does apply to limousine services, and it does apply to parking, and it does apply to hotel pickup services. Any legislation should apply to anybody who is in any way limited or charged for driving through an airport.

Mr. **Shailer**. We have previously limited it just to those types of businesses that provide courtesy vehicles, in other words where they do not make a charge for it.

Senator **Danforth**. Logically the same point. I mean, if we were drafting legislation, we should cover all of these issues.

Mr. **Shailer**. We had looked at that in some of our drafts, and found ourselves perhaps parochially limited to those types of businesses that use courtesy vehicles, amusement parks, park and fly, and rent-a-car companies.

Senator **Danforth**. But us broad-gauged guys in the Congress apply it to everybody.

Mr. **Shailer**. It is certainly worth pursuing.

Senator **Ford**. Senator Exon?

Senator **Exon**. Mr. Chairman, thank you very much.

Gentlemen, as you know, we are trying to be in the business of getting out of the airport business at the Federal level. Therefore, I have some basic concerns about what you are asking us to consider, but I have been listening with keen interest to the problems that you have.

Let me ask this question. I assume it has been stated, but I want to get it on the record. With regard to your concerns and your requests that legislation be introduced at the Federal level because there is Federal funding that goes to most airports—we try and have this at the lowest local level of government, in this case the municipalities for the most part or airport authorities under the municipalities that run most of these airports, and if not there, to the State as a whole. In the places where you have had some difficulties in this area, I assume you have appealed to the airport authority or the local city governments, the city council, transportation coordinators, and to the States with jurisdiction. Have you appealed to them for correction of this matter before you came to the Feds with your problem?

Mr. **Shailer**. Yes, we have, Senator.

Senator **Exon**. And you have had no success?

Mr. **Shailer**. No success whatsoever, no, sir.

Senator **Exon**. And the reason for that is what? The general attitude is that the local airport has a tremendous expense. They have got to have revenue, and they get it from the people who do business at the airport. Is that the answer?

Mr. **Shailer**. No, sir. The reason for that is that as a very practical, political matter, a rent-a-car company, an off-airport or a couple of off-airport rent-a-car companies don't have much clout, don't have much to bring to bear in terms of a local body. They don't have an issue, and we never had an issue until we could finally get some interest and get out to the people and get some consumer oriented and small business interest in this. It just has fallen on deaf ears locally. I can tell you that——

Mr. LOBECK. Well, maybe the reality of the thing is that our customer is not their constituency. Our customer came from another city. He is not their constituent, you know? So, our pleas have fallen on deaf ears. Our customer came from your city.

Mr. SHAILER. In other words, if we were to go to West Palm Beach, which just enacted one—an 8 percent gross receipts fee—when we went before that council, we were there as a rent-a-car company. The big Alamo issue again as the airports have tried to paint. The people who were being affected, the people to whom this fee was being passed on, who therefore were now paying higher prices for their vehicles with the competition being suppressed on this, they were from Minnesota and Boston and San Francisco and all over the country.

Senator EXON. Is this widespread? Is this in all airports or in most airports that people like you are being discriminated against?

Mr. SHAILER. With respect to the fee matter, Senator, it is in 9 or 10 airports now. It is a trend that we see evolving. We have been told by many airports, certainly not officially on the record, but even some have said on the record that they were simply waiting for the Sarasota decision to come down from the 11th Circuit Court of Appeals. And that is the decision, of course, that came down just a couple of weeks ago which made this hearing I think so appropriate and timely, which said that under the equal protection clause, the government can do just about whatever it wants to raise revenue, and you don't have any constitutional equal protection leg to stand on.

Senator EXON. If there was an airport—and I don't know whether there is or not, but if there was an airport that had no Federal funds involved in it, then the legislation that you are suggesting here would not apply?

Mr. SHAILER. Senator, I am not an expert or have much knowledge by any means in that particular area, whether that still would bring it in under the commerce clause because it affects interstate transportation, so that therefore even though it might not be federally funded, it might still come under it. I am sorry. I don't have the answer to that. I am sure that we could have a position, a legal paper on that.

Senator EXON. You are convinced that there is no way that this can be worked out at the local level by negotiations, good will, customer protection, free enterprise system. You are convinced that the only way to solve this is with Federal legislation?

Mr. SHAILER. Yes, sir. I believe that a national minimum standards policy needs to be set just as you have already done, and is on the books for the other side of that traveler's trip with respect to the air travel where you prohibit the head tax and where Congress did respond when the courts upheld the head tax against a constitutional attack. And Congress then stepped in because the court said that those head taxes were constitutional. You stepped in.

This is just the other side of that traveler's trip from getting into the airport to getting off of that airport property. And we think there has to be a minimum standard of a fair, reasonable and nondiscriminatory user fee imposition. And beyond that, the local airports can determine and set those fees. And we have not balked at those that have been done heretofore.

Senator EXON. Let me follow up my previous question. You have then appealed to the airport authorities in at least some instances for redress to what you think are your legitimate grievances. And you tell me basically that you have not been successful.

Have you appealed to the State airport director or State airport authority who have at least some indirect control over the airports with regard to allocation of some funds? Have you gone to the States?

Mr. SHAILER. Let me just speak to the two main ones that have happened, first, of course, the Sarasota one in Florida and then the West Palm Beach more recently.

Those local governments are county governments and they are county autonomous, elected county governmental bodies. There is no state director of airports as such in Florida to appeal to. But there is no governing body. The airport does not make those regulations. They may draft them up, but it's a governing body, the county commission, that enacts them, and that is the final body of legislative authority with respect to those laws.

Senator EXON. Are you telling me then as far as the experiences you have had thus far, you have not involved or appealed to any State authority, including the governor, for some relief?

Mr. SHAILER. No, sir, we haven't because of the fact that we are talking about something that involves 50 States rather than just one, which I think speaks for itself in saying that it is a national issue rather than one that ought to be addressed piecemeal, State by State by State. It involves interstate commerce. It is a national issue that I respectfully suggests cries out for a minimum standard.

Senator EXON. Well, gentlemen, I was just saying and I would say to the Chairman that had the founding fathers—we are now in the process of celebrating the Constitution of the United States of America—had they legitimately addressed this matter, if they had thought, far thinking down the road as to what we are going to do with the airport congestion and competition, I suspect we would not have had a constitution to begin with because you know how strongly those people felt about local control.

I understand your interests. I guess I am not yet convinced that we should get into it at the Federal level, but I thank you for your testimony anyway. And I thank you, Mr. Chairman.

Senator FORD. Thank you.

I want to ask one quick question, and this is dangerous because we are running out of time.

How do you handle a courtesy van from an entity that pays a tax to the community, i.e., a hotel? That's taking them to their final destination. That's the end of commerce. As I understand it, most hotel-motel courtesy vans are excluded because a tax is included in the rental of the room at the hotel that furnishes the courtesy van. Now, should we in this legislation you are suggesting say they have to pay something, or they would have to pay 10 percent of their gross in addition to the tax that is imposed by the local community or county or both?

Mr. LOBECK. I think there is a difference in the case of hotel occupancy taxes. It is my understanding that hotel occupancy taxes are earmarked towards tourism type development. And that goes to the city or the municipality's general revenue fund and is allocated by the municipality for those specific expenditures.

The airport is not taxing the hotels. The airport does not derive that 5, 8, 10, 12 percent occupancy tax. That does not flow to the airport. If the airports are going to charge an access fee, which we say is fair and acceptable, yes, they should charge it to the hotel.

Senator FORD. One of the reasons the airport may be financially successful comes from that tax. And one of the reasons that you can at least be there as an off-airport entity is because of the tourist tax.

Now we are getting into the question should we exclude some. And you say no. But that individual is paying a pretty sizeable room occupancy fee in addition to the rent.

Now, you want to know what is fair and reasonable. I think we ought to let the motel-hotel vans on at no charge because basically that passenger in that van is paying the funds to create the overall increase in local vacationers basically. You know, if you have to come to your town for business, that is one thing. You have to come, you know. You want to come. But to generate Florida—I see all kinds of ads, but it seems to me that it would be wrong for the airport to charge that van a fee in addition to his passengers paying an occupancy tax.

Mr. LOBECK. Senator, I understand what you are saying, but the occupancy tax—and I assume there is probably one somewhere in the Disney World area. They promote Disney World. They don't tell you to fly to Orlando or fly to Tampa. The consumer makes his choice as to which airport to fly to. His destination may be the same. It's a little bit further from Tampa, but a lot of people fly to Tampa to go to Disney World.

Senator FORD. Well, I would talk to the folks that fixed up the tour and would see if you couldn't get them in a little closer.

Thank you, gentlemen. It has been interesting, and I enjoyed it. Don't worry about fussing with Ford. We will have a good time before this thing is over with. Thank you very much.

We have three other witnesses today. I will get into that maybe more.

Mr. SHAILER. Thank you, Senator.

Mr. LOBECK. Thank you, Senator.

Senator FORD. The next panel will consist of Mr. Richard Judy, director of aviation, Miami International Airport; Mr. Bailis Bell, director of airports, Wichita Airport Authority; and Mr. George Bean, director of aviation, Hillsborough County Aviation Authority, Tampa, Florida.

Senator Kassebaum, Mr. Bell, was quite concerned she had to leave. But it was important for her to leave. Since you are part of her constituency, she wanted to stay.

We will start out with Mr. Judy, and then Mr. Bell, and then Mr. Bean. And hopefully, we can move right along. So, Mr. Judy?

STATEMENT OF RICHARD JUDY. DIRECTOR OF AVIATION, MIAMI, FL INTERNATIONAL AIRPORT

Mr. Judy. Mr. Chairman, we are grateful for the fairness and the reasonableness and the nondiscriminatory manner in which you and your staff have handled this issue.

Our testimony has been submitted in detail.

Senator Ford. It will be included in the record, Mr. Judy.

Mr. Judy. Thank you, sir.

Senator Ford. And if you want to just highlight it, that would be fine.

Mr. Judy. We will do our best to be brief. We won't introduce ourselves. That has already occurred.

Alamo has presented a proposal to the U.S. Congress suggesting they intervene in the right of a local government to raise revenues by limiting the fees collected by airports from customers of off-airport rental car firms. At the present time, all airport customers that rent vehicles from on-airport rental car firms pay an average of 10 percent of their total rental charges to airports.

The Alamo proposal would prohibit airports in charging an equivalent percentage fee to the customers' off-airport rental firms and any other off-airport entities. Instead it will require airports to charge only an amount that would recover the direct cost portion of the airport facilities used by courtesy vehicles. This amounts to a subsidy of $70 million at 30 of our airports alone that would be paid by all airport consumers for the benefit of the off-airport rent-a-car firms who, depending on the level of competition, may pocket the subsidy or may pass it through to their customers.

The impact of the Alamo proposal on airport revenues and the ability of an airport to finance capacity and safety improvements would be devastating. It would immediately induce airport rent-a-car firms to move off airports so they could compete against the subsidy, reducing the variety of service offered to the consumer. Alamo argues that if this is true, then on-airport rental car firms would have moved off-airport long ago.

The primary reason this has not happened is that the right of an airport to charge an off-airport rent-a-car customer an equivalent percentage fee has been before the U.S. 11th Circuit Court that recently ruled that an airport has a right to levy such equivalent percentage fees against off-airport firms and, therefore, on-airport rental car firms will not be leaving our airport if Congress rejects the Alamo proposal.

Alamo to support their proposal has organized a coalition of off-airport commercial entities that utilize courtesy vehicles to pick up and deliver their airport customers. Obviously, Alamo is doing this to convince Congress of their argument that since all off-airport commercial firms use courtesy vehicles, they should all pay the same fee. Then to get a free ride, they further ask Congress to restrict the fee to an amount that only reimburses the airport for the direct cost portion of the facilities used by courtesy vehicles. All other airport consumers, including on-airport car renters, pay not only for such direct costs, but pay a share of the cost of all facilities that must be in place for an airport to function.

Alamo has persuaded several airport area motels to join their coalition by claiming that if airports have the right to charge airport customers of off-airport rental car firms a percentage of the car rental costs, airports will also charge the customers of the hotels the same percentage fee against their hotel bill.

This is a false assumption since local governing bodies are well aware that hotel consumers and customers already pay in most airport jurisdictions a bed and lodging tax from 1 to 5 percent.

It is worthy of note that no major national hotel chain has been convinced by Alamo to join the coalition. A letter to you, Senator Ford, dated August 4, 1987 from the American Hotel and Motel Association I believe confirms this observation.

Alamo calls its coalition Americans Against Unfair Fees. Others call it Americans for a Free Ride. Just having fun, Senator.

Alamo argues that all their proposal does is to require that the basic concept of reasonableness, fairness and no unjust discrimination be the basis of local government establishing airport rents, fees and charges. Congress, who know that airports charge the customers of on-airport rent-a-car firms a fee equivalent to 10 percent, will under the Alamo proposal be requiring airports to unjustly discriminate by drastically limiting charges to the customers of off-airport rental car firms while other airport consumers, who currently pay fair and nondiscriminatory fees and support the financing of billions of dollars of airport bonds, will be required by Congress to subsidize the off-airport rental car customer.

There is no free lunch. In this case it is just a matter of who Congress decides is going to pay the bill: other airport consumers or local taxpayers. And I say local taxpayers because we have got to keep in mind that many of our airports operate at a deficit.

Congress does not constitutionally, of course, belong in this local business dispute, and the Senators here have echoed that thought. Any legislation Congress passes will have devastating impacts on the airport rental car revenues. At 30 of our airports that currently exceeds $170 million annually, which is greater than the amount received by airports from the Federal entitlement funds.

The single classification requirement proposed to Congress by Alamo for all off-airport commercial entities utilizing an airport will also have an extremely adverse impact on the ability of an airport to maximize the use of its limited landside commercial capacity. Today airports allocate such capacity to the commercial providers of transportation that serve the demand of the greatest number of passenger consumers, while preserving a variety of essential services rather than, as proposed by Alamo, assigning all capacity equally among the on-airport and the 400 off-airport commercial entities regardless of the service demand of the great majority of airport consumers or the need to provide a variety of services to the traveling public.

Now, the bicentennial year of the Constitution is a time for all of us to reflect on the fact that all powers not specifically reserved in the Constitution for the Federal Government belong to the States and their local governments unless, of course, the issue is one affecting interstate commerce adversely. Alamo has not concentrated on this point nor have they proven this claim that interstate commerce is being adversely affected by the truly reasonable, fair and nondiscriminatory policies currently being administered by local governments in dealing with all rental car firms and all customers.

If we set the precedent that one business feeling aggrieved over the issues of revenue collection and local jurisdiction can receive a congressional pardon, we are opening the flood gates to any business with similar invalid grievances.

Today it is local governments that can boost a balanced budget. And thus, Congress should take note of its own fiscal position before imposing fiscal irresponsibility on local governments by intervening in the constitutional taxing powers of local governments.

Thank you, sir.

Senator FORD. Mr. Bell, if you have a statement, it will be included in the record.

STATEMENT OF BAILIS BELL, DIRECTOR OF AIRPORTS, WICHITA, KS, AIRPORT AUTHORITY

Mr. BELL. Thank you very much. This on-airport/off-airport dispute is only one of many that has arisen at our nation's airports on both airside and landside involving businesses seeking the best possible access and competitive advantage. Airport managers try to balance the competing interests of companies which use and serve the airport, while protecting the interests of the primary beneficiaries of the airport. That is the people we work for—the communities and the traveling public.

Where commercial interests have an unresolvable grievance against an airport, the courts offer the proper recourse. The grievance should not be resolved by Congress tinkering with the fundamental Constitutional rights of local government to raise revenues and manage its local affairs.

During the first meeting between Alamo and airport representatives, four key points were discussed. Number one—It is a local business dispute which the airports, not the Federal government, should resolve. Number two—Airports must be able to classify different business users in order to effectively manage our landside facilities and control roadway congestion.

Number three—A percentage of gross receipts charged on off-airport rental companies is fair because it reflects the volume of business conducted at an airport. Number four—Charging gross receipt fees on hotels and motels who already operate courtesy vehicles would not be fair because they already pay comparable percentage fees in the form of room taxes to the same local governments who own and operate the airports. A number of these points have already been brought out.

These points are crucial to understanding the devastating consequences Congressional acceptance of Alamo's proposal would cause. The Federal courts have agreed with our arguments in the recent Shreveport and Sarasota decisions. Both decisions recognized the right of local governments to classify and impose percentage user fees for any car rental company as a class of airport services, whether they be on- airport or off-airport.

The courts have provided well-reasoned answers to these issues. The courts have clearly recognized the distinct difference between the off-airport car rental companies which derive substantially all of their business from the airport, and at the same time compete with tenant car rental companies who pay substantial airport charges, and off-airport hotel or motel courtesy vehicle operators, for which the service is not an indispensable portion of their business.

If airports are restricted in charging appropriate fees, the on-airport car rental companies will have every incentive to move off the airport and take with them the substantial revenues which airports depend upon. The threat is real. Nearly all airports charge on-airport car rental companies and other concessionaires a fixed percentage of their gross receipts from their business at the airport. By staying on the airport these companies would face a serious competitive disadvantage in paying fees that off-airport competitors can avoid.

The off-airport rent a car group, or Alamo, argues that if on-airport companies would go off, why haven't they done so already? The simple answer is that on-airport car rental companies for the last five years have been demanding that airports reduce their fees to compensate for the massive subsidy granted off-airport car rental firms that do not pay percentage fees. They have put airports on notice that otherwise they will have no alternative but to consider moving off the airport.

This is a logical business approach while awaiting a final court decision. Now that the courts have decided, car rental tenants won't pursue the off-airport option solely to avoid charges knowing that the airport can charge fees whether they are on or off the airport.

However, if Congress intervenes with a law restricting off-airport charges, Congress would be sending a very clear signal to the on-airport companies that their best hope for survival lies off the airport, not only to avoid airport charges, but as a necessary step to compete with off-airport companies who gain an unfair competitive advantage.

To help add perspective, we have attached an exhibit comparing the revenue received from car rental tenants with Federal AIP entitlement funds for 30 larger airports. In many cases, car rental revenues considerably exceed AIP funds. It should be obvious that the loss of these monies would be disastrous to our national system of airports.

In fact, if all car rental revenue is lost to those 30 airports, it is estimated that the landing fees to the air carriers would go up approximately 30 percent, and those fees are passed right along to the consumer.

As you can see, Mr. Chairman, this issue does not simply involve off-airport car rental companies, but has far-reaching implications. The benefits of increased airport grants from the new AIP program, which you and the subcommittee have worked so hard to achieve, will be largely negated if Congress enacts legislation that jeopardizes traditional airport revenue sources.

In closing, Mr. Chairman, we see no justification for Congress to enter into this local dispute and infringe upon the proprietary powers and responsibilities of local governments, especially in an area that is so critical to our management and financing capabilities. We strongly urge you and the subcommittee members not to take action in this matter.

Thank you very much. I would like to introduce Mr. George Bean.

Senator FORD. George, you may proceed.

We have a vote on. I've got about seven minutes before I have to get over there and vote. I apologize for that, but we'll get through here before we—I'll listen to you before I miss the vote.

STATEMENT OF GEORGE BEAN, DIRECTOR OF AVIATION, HILLSBOROUGH COUNTY AVIATION AUTHORITY, TAMPA, FL

Mr. BEAN. Thank you, Mr. Chairman. I'll move on quickly.

I'm George J. Bean, Director of Aviation for the Hillsborough County Aviation Operators of Tampa Airports.

Alamo has very skillfully presented their proposal as a consumer issue, implying the consumer's interests are better served by Alamo than on-airport rental car companies. Since there was no independently produced information available to make comparisons, I requested the Tampa office of Arthur Young International to conduct a comparison shopping survey involving three Tampa rental car firms. This was done on September 8 and 9, 1987.

The firm was instructed to rent comparable vehicles from two of the five on-airport companies, Hertz and Dollar, and from Alamo which is located off-airport. At Tampa, on-airport rental car companies pay percentage of gross receipts privilege fee, while off-airport companies pay a minimal fee for each courtesy van using the airport.

Arthur Young was given written instructions intended to produce comparable cost information. You have a copy of the instructions and a copy of the Young report, which is on file.

Because of differing basic rental policies of the three companies, it is difficult to make identical comparisons. However, to be as fair as possible, I have taken the minimum costs to each of the renters and separated them out, and I have called them the basic charges. The basic charges is the daily rate plus tax.

The lowest cost was an on-airport company, Dollar. The highest cost was the off-airport company, Alamo. The cost at Dollar was $25.27. For Hertz it was $28.94. For Alamo, $29.39. These were the total costs that Dollar and Hertz charged.

However, there were additional charges at Alamo, including an $11.95 refueling service charge, a twenty cent airport service charge. And not planned, the Alamo vehicle was returned ten minutes late, as shown by the graphs. And the result was a late return charge in the amount of $11.65. There was additional costs for fuel, which makes Alamo even more expensive. And no matter how the comparisons were made, Alamo is more expensive by a considerable amount than the two on-airport rental car companies.

The shopping comparison, while it's not a scientific statistical study, dramatically challenges Alamo's contention that they should be given special consideration in the interest of consumer protection.

Thank you, Mr. Chairman.

JOINT TESTIMONY OF THE AIRPORT OPERATORS COUNCIL INTERNATIONAL [AOCI] AND THE AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES [AAAE]

Mr. Chairman and Members of the Subcommittee: I am Richard Judy, Director of Aviation for Miami International Airport. With me today are three airport directors: George Bean of Tampa International Airport, Bailis Bell of the Wichita Airport Authority, and Jim Bennett of the Shreveport Regional Airport. Our testimony this morning is on behalf of the Airport Operators Council International (AOCI), which represents the hundreds of local governments that provide and finance our nation's airports, and the American Association of Airport Executives (AAAE), which represents the more than 1200 airport executives who manage them.

We are here today because of our great concern over the disastrous consequences that Alamo Rent-A-Car's legislative proposal would have on each and every commercial airport and our national system.

Frankly, Mr. Chairman, we should not be here, because we believe the issue raised by Alamo does not warrant the attention of Congress on its merits and is not, in any event, an issue deserving of congressional intervention. The issue is nothing more than a local business dispute—a *local* governmental matter. However, we recognize the time and energy that you and your staff have devoted to investigating this matter. At your request, representatives of AOCI and AAAE came to Washington for a series of meetings in an attempt to resolve this local affair. We regret that, despite our best efforts, the meetings did not produce a solution acceptable to Alamo. We hope you can appreciate the impossible task we faced in trying to satisfy the excessive and unjustifiable demands of Alamo, while preserving the constitutional rights of local governments to manage and finance their airports in the best interests of all airport users.

We intend to make four major points in our testimony: 1. traditional airport controls and revenues must be preserved; 2. the Alamo proposal would force consumers to continue to subsidize off-airport companies; 3. the Alamo proposal would not benefit rental car consumers and; 4. no Federal intervention is warranted.

1. *Traditional Airport Management and Financing Abilities Must Be Preserved*

Alamo's proposal strikes at the fundamental ability of airports to classify and regulate various categories of airport users in order to equitably allocate limited airport facilities and to raise revenues critical to financing airport development. Alamo's proposal would, in brief, prohibit airports from classifying different users (i.e., treating car rental companies as car rental companies, and hotels as hotels); prohibit airports from levying different charges on user classes based on the different benefits they receive and on their different facility impacts and services they provide airport consumers; and would prohibit appropriate percentage fees on off-airport companies, based on local circumstances and objectives, to raise and preserve necessary revenues.

For years off-airport rental car companies were small in numbers and volume. However, in the past ten years, the off-airport market has experienced explosive growth. Airports are now besieged with a proliferation of off-airport commercial operators (car rental courtesy vehicles, "for-hire" and private limousines, public and private scheduled buses, tour group charter buses, taxis, delayed baggage delivery vehicles, express package delivery vehicles, hotel/motel and off-airport parking courtesy vehicles, inflight catering trucks, airline crew and service vehicles, and a host of other operators). It is essential that airports continue to be able to allocate access to limited airport facilities on the basis of essential consumer service needs if we are to ensure that essential ground transportation services are provided to the greatest number of air travellers. If the Alamo proposal is adopted, Congress in effect will be turning the roadways and ground transportation service areas into common property. Consequently, no one will control access and the fixed supply of landside facilities will be overused by commercial operators causing severe traffic congestion and destroying the efficient functioning of the airport.

At a time when the airport and aviation industry is faced with major capacity and safety challenges, it would be unwise for Congress to in any way limit the ability of airport operators to raise revenues to finance multi-billion dollar improvement projects that will increase safety and help reduce delays for millions of air travelers. Airports across the country now face tremendous costs for landside facilities to meet growing demand for essential ground transportation services. A comprehensive survey of airports nationwide indicates landside capital needs of more than *$3 billion* over the next five years.

If Congress provides relief to Alamo, would it next consider restricting what airports may charge on-airport businesses, and thus become mired down in local business disputes which airport managers must grapple with every day? The attached pie chart (Exhibit A) shows the average distribution of airport revenue among 30 major U.S. airports according to seven major areas. These airport revenues serve as the security for airport bond financing, the primary funding source for landside facilities, on which, we might add, Alamo and similar companies depend for their livelihood. You can see that all other airport users including tenant (on-airport) car rental companies and automobile parking (according to their *unique classifications*) contribute substantially yet equitably to airport revenues. However, compare the revenue shares between on-airport rental car companies and all off-airport revenue, which includes off-airport rental car company payments to airports, and you can see that the off-airport contribution is very small. In fact, we tried to separate off-airport rental car payments from other forms of off-airport courtesy vehicles, but the off-airport rental car payments were so small at less than one-tenth of one percent ($215,000) that the computer couldn't even print it.

If Congress adopts Alamo's proposals, other airport users would have every reason to also seek relief from Congress, particularly when they are hit with higher airport charges as a result of the loss of off-airport, and substantial on-airport, revenues. Thus, granting Alamo's request would set in motion a series of events that would inevitably destroy the "user pay" principle which is fundamental to our airports' charging systems.

In a 1985 report to Congress, the Secretary of Transportation observed that virtually all airport funding comes from airport user sources. Airport revenue sources are therefore finite (largely due to a federal prohibition of another more efficient and fair method of raising revenues: a passenger head tax). Yet, the costs of developing, operating and maintaining public facilities are growing dramatically.

Even the limited portion of airport capital funding provided by the Federal Government comes from user taxes. Airport user fees are in fact required by federal grant assurances. In order to receive federal Airport Improvement Program (A.I.P.) funds, airports must "maintain a fee and rental structure for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible." [1] It is sadly ironic that Congress is even considering restrictions on airport charges that would clearly undermine the obligation of airports to comply with the federal requirement to be self-sustaining. Not only would user revenues be lost, but federal airport grant assistance potentially would be jeopardized as well. Clearly, this cannot be in the best interests of our nation's aviation system.

If airports are prohibited or restricted in charging equitable fees to off-airport companies, the on-airport car rental companies will have every incentive to move off airport property and take with them the substantial revenues on which airports depend. *This threat is real.* Nearly all airports charge on-airport car rental companies and other concessionaires a fixed percentage of their gross receipts from business at the airport. This has been a long-standing and accepted practice. However, the benefits these companies receive from operating on-airport are simply not great enought to keep them as airport tenants if they can escape airport charges by moving off airport. By staying on airport, they would face a serious competitive disadvantage in paying fees that off-airport competitors can avoid.

Alamo argues that if on-airport companies would go off, why haven't they done so already? The simple answer is that on-airport car rental companies for the last five years, while waiting for the courts to resolve the issue, have been demanding that airports reduce their percentage fees to compensate for the massive subsidy granted off-airport car rental firms that do not pay percentage fees. They, too, want a "level playing field" to fairly compete, and have put airports on notice that otherwise they will have no alternative but to reconsider their present policy of being on-airport. In fact, Hertz recently moved off Houston Hobby Airport, citing the effects of off-airport competition.

Clearly, this is a logical and sound business approach for them while they were awaiting a final decision on the pending court cases which will be discussed later. Now that those cases have been decided, car rental tenants won't pursue the off-airport option solely to avoid charges, knowing that the courts have reaffirmed that airports can charge appropriate fees whether the users are on- or off-airport. However, if Alamo prevails and Congress intervenes to enact a law restricting or prohibiting such airport charges, Congress would be sending a very clear signal to on-airport companies that their best hope for survival lies off the airport. These companies would then have sound reasons and a strong incentive for moving off-airport, not only to avoid airport charges, but as a necessary step to be able to compete with off-airport companies who would gain an unfair competitive advantage.

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[1] Sec. 511 of the Airport and Airway Improvement Act of 1982, Title V of P.L. 97-248; 96 Stat. 671; 49 U.S.C. App. 2201 et seq.

To help put this issue in perspective, we have attached an exhibit (Exhibit B) to our testimony which compares the amount of revenue received from car rental companies with the amount of federal AIP entitlement funds at 30 major U.S. airports. In many cases, car rental revenues exceed AIP funds considerably, and in other cases they are nearly equal. It is obvious that the loss of all or a significant portion of these revenues would be disastrous to our national system of public airports.

Therefore, aeronautical and non-aeronautical users must all pay their fair share toward the costs of developing, expanding and operating our nation's airports. Airlines pay through landing fees and terminal rents; passengers pay through airline tickets and the federal ticket tax, which in turn provides funds for the Aviation Trust Fund to cover a portion of airport improvement costs and costs related to the functioning and development of the entire aviation system.

Because of the steady flow of "customers" airport facilities provide, other commercial interests choose to tap this market. Concessionaires, who provide: food and beverage, gift shops and other conveniences to travellers; car rental companies; taxis; and a multitude of other retailers operate at the airport and pay fair charges for their use of airport facilities *and* the privilege of conducting business. To the extent the airport increases capacity and air service, these businesses all profit from a larger pool of customers. While Alamo seeks to reduce their business costs in lucrative airport markets, their proposal would result in a massive reduction in revenues from on-airport car rental companies and devastate airport financing capabilities.

2. *Consumers Would Continue to Subsidize Off-Airport Companies*

In truth, what Alamo seeks from this Congress is the right to evade legitimate and necessary charges that other airport commercial services must pay toward total airport costs and funding needs. If Alamo succeeds in convincing Congress to restrict or prohibit airport charges on off-airport car rental companies, their gain will come either at the expense of all other airport consumers or the local taxpayer. In any event, we must point out that if Congress were to adopt the Alamo proposal, airports in turn will be required to pass the cost of any lost revenue to the overwhelming majority of passenges who neither use off-airport rental cars nor benefit from the *alleged* "lower prices".

Airlines and all other concessionaires who would be burdened with increased airport rental rates, fees and charges would inevitably pass these increased costs along to passengers through higher airline ticket and concession prices. The majority of passengers would, in effect, be forced to subsidize the operations of Alamo and other off-airport companies. As shown in Exhibit C, we have estimated that sales in the rental car market at 30 major U.S. airports in 1986 exceeded $2.3 Billion. On-airport companies served about two-thirds, with the remaining one-third being handled by off-airport companies. But whereas on-airport companies paid airport fees totalling some $168 million, equalling about 10% of their income, off-airport rental car companies paid a paltry $215,000 to airports last year. That comes to less than four one-hundredths of one percent (.04%) of the total income they derived from the airport market. If the Alamo proposal becomes law, Congress would be forcing the continued subsidization of one consumer group by another—*without having any assurance that the subsidy will be passed on to the consumer.*

Alamo contends they want lower airport charges in order to pass the savings along to *their* customers. Frankly, we do not believe that Alamo customers get *any savings* even at airports where they are not charged a percentage fee.

Notwithstanding Alamo's contention, we are not convinced they or other companies would pass along such savings to their customers rather than garner increased profits. Fundamental economic theory shows that prices in a competitive market are set by supply and demand, not primarily by costs. In competitive circumstances, companies try to reduce costs and increase revenues to increase profits.

The travelling public also deserves assurances that companies providing services at airports will deliver the full services they advertise at the price they advertise. Airports have some means to screen out inadequate or unscrupulous businesses and to regulate business practice of tenant companies through contractural requirements and the competitive bidding process. Airports require minimum service standards of on-airport companies, such as requiring tenant rental car companies to provide 24-hour service on demand, maintain the necessary fleet of safe, clean rental cars, and provide on time courtesy vehicle pickup and discharge services.

Airports have no such authority for consumer protection over off-airport companies who may operate only the level of service and number of vehicles which are marginally most profitable, regardless of overall demand. They can selectively "skim the cream" of consumer demand at the airport for their own profit interests, while on-airport rental firms are contractually bound to meet all demand, twenty-four hours per day, including the tremendous peak holiday and seasonal demand, as well as less profitable off-peak demands.

Airports also have little ability or power to protect consumers who use airport car rental service providers from deceptive business practices, such as "bait-and-switch" techniques or other gimmicks reported by both *Fortune* magazine (August 1987) and *Consumer Reports* (July 1985). Airports are justifiably concerned because in a survey of 65,000 consumers, *Consumer Reports* rated Alamo the worst by far in overall consumer satisfaction—even worse than Rent-A-Wreck. Car rental consumers rated Alamo worst in "unexpected charges far above the advertised price" due to add-ons such as unnecessary insurance, drop-off charges, etc.; worst in "pressure to buy collision damage waiver (CDW)"; worst (tied with another major off-airport firm) in finding rental offices open to return cars; and worst for long waits in rental counter lines, which *Consumer Reports* attributed to lengthy sales pitches to customers "for extras they hadn't planned on buying."

There are a host of consumer issues involved here that are far more deserving of scrutiny than any (if any) impact on prices that airport charges may have.

At this time, Mr. Bailis Bell will discuss other serious ramifications of this issue.

3. *No Federal Intervention is Warranted*

Airport operators are obligated, as public entities, to provide quality and convenient services for all the traveling public, and to foster competition that will promote competitive prices and offer passengers the widest range of prices and service choices. Many airports have made great strides in providing facilities for additional on-airport car rental companies. It is very common today to find 5 to 8 car rental companies on-airport, including Alamo at some locations, rather than just the few which dominated the on-airport market during the early growth years of the rental car industry. The only factors that limit additional on-airport opportunities at some airports are the amount of space available and market demand for additional services. There is not a legitimate rental car company that does not have the opportunity to compete for on-airport facilities.

During the first meeting between Alamo and airport representatives, four very key points on this issue were discussed:

1. It is a local business dispute which the courts, not the Federal Government, should resolve;

2. Airports must be able to classify different business users and treat them differently in order to effectively manage our landside facilities and control roadway congestion;

3. A percentage of gross receipts charge on off-airport car rental companies is fair, because it is fair to all consumers who rent cars on- or off-airports, and because it reflects the volume of business a particular company is conducting at an airport; and,

4. Charging gross receipts fees on hotels and motels who also operate courtesy vehicles would not be fair, because they would be taxed twice since, in nearly every state, they already pay comparable percentage fees in the form of room taxes to the same local governments who own and operate the airports.

4. *The Courts Have Upheld Airports' Rights and Responsibilities to Raise Revenues and Regulate User Classes*

These remain very valid points which are crucial to understanding the devastating consequences that congressional acceptance of Alamo's proposal would cause. The federal courts have agreed with our arguments in the recent *Shreveport* [2] and *Sarasota* [3] decisions. Both of these decisions reaffirm the right of local governments to classify and impose percentage user charges on off- (and on-) airport car rental companies as a class of airport services.

In the *Sarasota* decision of August 25, 1987, the 11th Circuit U.S. Court of Appeals upheld percentage user fees and addressed each of the issues, respectively, as follows:

1. It was "rationally related" to revenue-raising, which the court said is a "legitimate and substantial governmental objective";

2. It reflects "the different benefits the various categories of users derived from the airport";

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[2] *Airline Car Rental, Inc. v. Shreveport Airport Authority,* No. 85-1201 (W.D. LA, April 13, 1987).

[3] *Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Authority,* No. 86-3396 (11th Circuit, August 25, 1987).

3. The gross receipts fee for off-airport car rental companies "only applies to passengers picked up at the airport by a courtesy vehicle", whereas "on-airport car rental companies, on the other hand, must pay ten percent of the revenues they receive from *all* customers", in addition to fixed rent for terminal and other airport space they lease;

4. "The off-airport company user fee is designed to fluctuate based upon the number of airport passengers who purchase car rental services", so that companies "serving few airport passengers will pay a small fee, which in some cases will be lower than the flat fee that hotel and motel courtesy vehicle operators must pay"; and,

5. "The distinctions [between hotels/motels and car rental companies] the Authority has drawn are based upon its rational assessment of the relative benefits and the extent of use of each category of vehicles that enter the airport" and "the user fee schedule is well-tailored to achieve this objective."

The courts have provided well-reasoned answers to the issues.

Alamo contends that a percentage of gross receipts charge, or any charge beyond the cost to the airport of their actual use of facilities, is "unfair" and "excessive". They also argue that they should be charged the same as hotel or other courtesy vehicle operators who also pick-up and discharge passengers. As the courts have clearly recognized, there is a distinct difference between off-airport car rental companies and off-airport hotels. Car rental companies which operate off airport but utilize airport facilities to pick up and discharge passengers derive substantially all of their business from the airport and, at the same time, compete with tenant car rental companies who must pay substantial charges for the right to do business at the airport. Hotel and motel courtesy vehicle operators, on the other hand, provide a variable service to their customers and an alternative to taxis, but, as the court noted in *Sarasota,* "the service is not an indispensable part of their business."

Further, percentage user fees are fair within the class of off-airport car rental firms since they do not discriminate against small rental car businesses by loading them up front with fixed "doing business" costs regardless of business volume. In fact Alamo's proposal, if adopted, would cause some smaller car rental firms to pay *more* than they now pay under percentage fees.

Mr. Chairman, this on-airport/off-airport car rental dispute is only one of many disputes that have arisen over the years at our nation's airports, on both the airside and landside, involving businesses seeking the best possible access and competitive advantage.

The complaints of arbitrary, capricious, unreasonable, even unconstitutional behavior that Alamo has been making have been made before. Indeed, within the last five years courts at both the state and federal level have had the opportunity to address claims by Alamo and other off-airport car rental agencies that it is somehow discriminatory and unreasonable to charge them one type of fee while assessing a different, more nominal fee upon other types of commercial users. We happily can report that in each instance these litigations have lead to the eventual resolution of the issue in favor of the airport operator.

Baker Car Truck Rental, Inc., v. Gulfport-Biloxi Regional Airport Authority, No. 79, 854 (Miss. Harrison County, Chancery Div.) was decided in June 1982. Baker, which had failed to qualify as a bidder for an airport concession, challenged the Airport Authority's resolution establishing a fee for off-airport car rental companies. Banker charged that the resolution violated the Fourteenth Amendment's Equal Protection Clause insofar as it assessed a ten percent fee for these companies but, at the time of the suit, did not assess a fee upon hotels and motels for their use of courtesy vehicles at the airport. The Mississippi state court found that Baker was properly classified separate and apart from hotels and motels since he was not competing with them but, rather, was competing with the airport concessions. Thus, Baker had not met its burden of establishing that the airport's classification was unreasonable.

Indeed the court noted that in addition to a duty of being fair and reasonable, the airport operator also was "charged with the responsibility . . . to provide revenues for the operation of the airport." Under these circumstances, the court found that it was reasonable and proper to seek those revenues from commercial users of the airport such as Baker, "since the airport is the source of their business."

A similar claim made by Airline Car Rental Inc., an Avis licensee, was rejected by the U.S. District Court for the Western District of Louisiana in *Airline Car Rental, Inc., v. Shreveport Airport Authority.* In *Shreveport* the District Court granted summary judgment to the Airport Authority dismissing Airline's claim that non-tenant car rental agencies were being unconstitutionally required to pay seven percent of their gross receipts while other shuttle operators either paid a flat fee or no fee at all. The District Court took note of the Airport Authority's responsibility to raise revenue, and pursuant to federal statute, to keep the airport self-sustaining in order to qualify for airport development funds. Thus, the District Court found that the airport's need to porotect its sources of revenue (i.e., on-airport car rental revenues) was enough to justify the difference in treatment.

Finally, as previously noted, the U.S. Court of Appeals, in *Alamo Rent-A-Car Inc. v. Sarasota-Manatee Airport Authority,* rejected Alamo's own claim that the airport's fee resolution, which assessed a percentage of gross receipts fee upon Alamo while assessing a flat fee for hotel and motel courtesy vans, denied it equal protection of the laws, since the airport could reasonably conclude that the hotels and motels derived a different benefit from the airport. The Circuit Court completely rejected as well Alamo's related claim that being assessed the same percentage rate as the airport concessions was irrational and improperly motivated. Calling revenue raising a "legitimate and substantial government objective", the Court of Appeals found the airport resolution to be rationally related to its goal of "maximizing revenue".

Of course, in both the *Shreveport* and *Sarasota* cases, the off-airport rental car companies are appealing the courts' decisions against them. Airline Car Rental has appealed to the U.S. Court of Appeals for the Fifth Circuit, and Alamo has petitioned the 11th Circuit Court of Appeals for a rehearing. This matter, which basically has been decided, is still in the hands of the federal courts. Congress should not have to become involved in these local issues being examined elsewhere.

Airports must allocate critical space to the highest priority needs for the public benefit. These are decisions we face daily and which we are responsible for resolving.

To the best of our ability, we, as airport managers and representatives of local and state governments, try to balance the competing and conflicting interests of companies which use or serve the airport, while protecting the interests of those who should be the primary beneficiaries of airport facilities and services—*the communities we represent and all the passenger consumers.* Where commercial interests have a grievance against an airport which we are unable to resolve through direct negotiations, the courts then offer the proper means of recourse. The grievance should not be resolved by Congress tinkering with the fundamental constitutional rights of local government to raise revenues and manage its local affairs, as long as no legal rights of our citizens are violated.

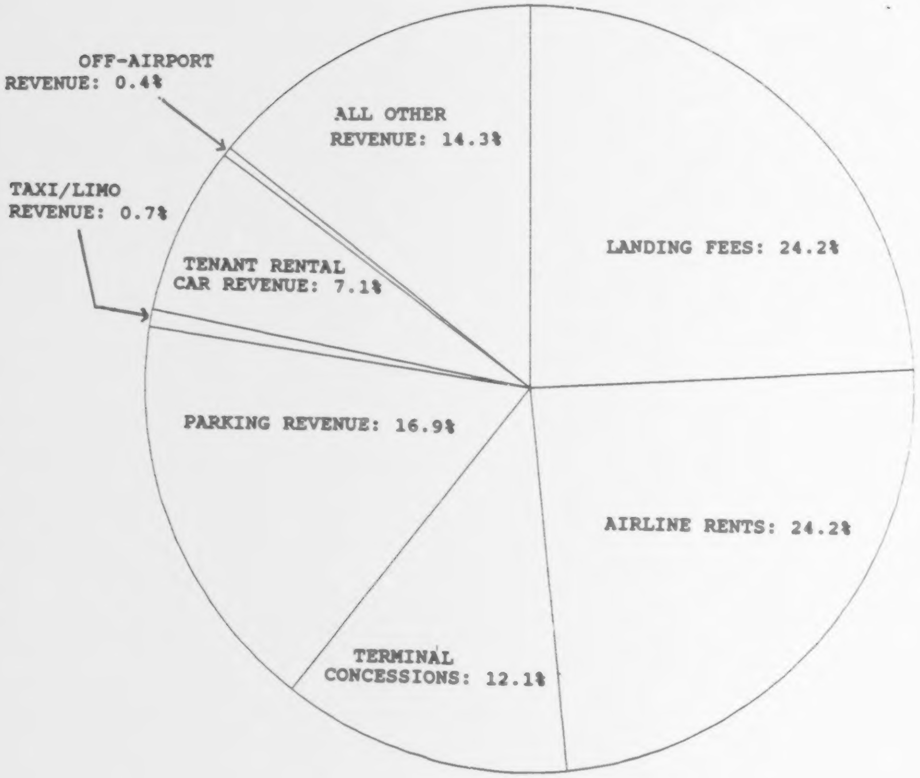
As I hope you can see, Mr. Chairman, this issue does not simply involve or affect off-airport car rental companies but has far-reaching implications. The benefits of increased airport grants from the new Airport Improvement Program you and the Subcommittee have worked so hard to achieve may be largely negated if Congress enacts legislation that jeopardizes traditional airport revenue sources.

In closing, Mr. Chairman, we can see no justification for Congress to enter into this local dispute and infringe upon the properietary powers and responsibilities of local governments, especially in an area that has been upheld by the courts through rigorous judicial review, and which is so critical to our management and financing capabilities. Subsidies to off-airport companies are not equitable and should not be encouraged or condoned by Congress. Consumers would not benefit from Alamo's proposals, and there really is no need for Federal intervention in these local matters.

We strongly urge you and the Subcommittee members not to take action on this matter. Thank you.

Exhibit A

REVENUE DISTRIBUTION FOR 30 MAJOR U.S. AIRPORTS



THIRTY SELECTED AIRPORTS

Exhibit B

COMPARISON OF ON-AIRPORT RENTAL CAR REVENUES TO ANNUAL FEDERAL ENTITLEMENT AND LANDING FEE REVENUES

AND

THE REQUIRED % INCREASE IN LANDING FEES IF ALAMO PROPOSAL IS ADOPTED BY COCRESS.

AIRPORT	(1)RENTAL CAR ON-AIRPORT REVENUES	(2)FEDERAL ENTITLEMENT FUNDS(AIP)	(3)LANDING FEES	
			LATEST COMPLETE FISCAL YEAR	% INCOME REQUIRED IF ALAMO MINIMUM CHARGE PROPOSAL IS ADOPTED BY CONGRESS
Los Angeles	12,920,000	11,795,000	$36,471,000	35.43%
San Francisco	11,349,000	8,565,000	20,071,840	56.54%
Boston	8,636,000	7,327,000	27,267,000	31.67%
Denver	8,612,000	9,695,000	16,117,651	53.43%
Miami	8,306,000	7,124,000	28,197,400	29.46%
Orlando	8,284,000	3,984,000	8,090,000	102.40%
Newark	9,749,000	8,809,000	47,120,567	20.69%
O'Hare	7,236,000	12,434,000	62,683,481	11.54%
DFW	6,867,000	11,305,000	55,520,000	12.37%
Atlanta	5,452,000	12,434,000	26,813,969	20.33%
Phoenix	6,303,000	4,936,000	9,705,349	64.94%
Detroit	5,989,000	4,898,000	8,745,697	68.48%
Ft. Lauderdale	5,673,000	3,270,000	6,033,161	94.03%
Seattle	5,220,000	4,814,000	16,943,879	30.81%
Philadelphia	5,105,000	4,514,000	13,400,000	38.10%
Wash. National	4,747,000	0	6,500,000	73.03%
San Diego	4,873,000	3,562,000	6,262,000	77.82%
LaGuardia	5,628,000	7,563,000	34,537,234	16.30%
Tampa	4,392,000	3,924,000	6,100,000	72.00%
Minneapolis	3,834,000	5,285,000	9,692,604	39.56%
St. Louis	3,675,000	6,462,000	13,876,615	26.48%
Houston IAH	3,663,000	5,194,000	11,743,826	31.19%
San Jose	3,543,000	2,518,000	3,292,000	107.62%
Dulles	3,293,000	0	3,400,000	96.85%
JFK	4,107,000	10,376,000	69,342,199	5.92%
Pittsburgh	2,878,000	5,471,000	7,563,338	38.05%
Las Vegas	2,877,000	4,316,000	13,481,827	21.34%
West Palm	2,783,000	2,499,000	2,104,435	132.24%
New Orleans	2,781,000	3,405,000	7,434,003	37.41%
Cleveland	2,584,000	3,128,000	11,200,000	23.07%

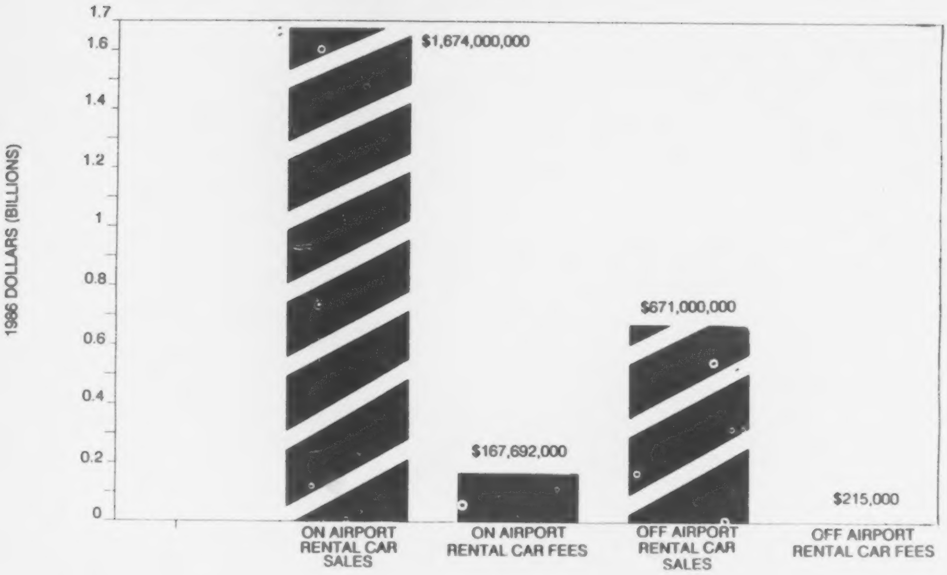
(1) REVENUES ARE PAID ON A PERCENTAGE OF GROSS SALES (AVERAGE FEE IS 10%).

(2) THE RENTAL CAR REVENUES THAT CONGRESS WOULD ELIMINATE IF THE ALAMO PROPOSAL IS ADOPTED IS GREATER THAN THE FEDERAL ENTITLEMENT FUNDS RECEIVED FROM THE EIGHT PERCENT TICKET TAX.

(3) SOME AIRPORTS MAY NOT BE ABLE TO INCREASE LANDING FEES TO REPLACE THE LOST RENTAL CAR REVENUES. THE ALTERNATIVE THEN WOULD BE TO INCREASE VEHICLE PARKING CHARGES PAID BY LOCAL CITIZENS WHO ALREADY PAY MORE THAN THEIR FAIR SHARE BECAUSE AIRPORTS HAVE NOT BEEN ABLE TO CHARGE OFF-AIRPORT RENTAL CAR CUSTOMERS THEIR FAIR SHARE.

Exhibit C

SHARES OF AIRPORT RENTAL CAR MARKET AND AIRPORT FEES



Senator FORD. Thank you very much, gentlemen.

I have six questions that I would like to submit to you in writing. I think we've gone through this, not only in my office, but on three spearate occasions. I am well aware of arguments on both sides. We now have it out on the table here publicly. It will now be in the hands of those Senators on the Aviation Subcommittee and of the full committee.

So under the circumstances, I apoligize to all three of you for having to do this, but I must go vote. Some constituents probably say if we just closed up and went home, everybody would be better off. But that's not the way it's played.

I will submit these questions to you in writing and ask that you try to respond to those in two weeks. I believe Mr. Shailer asked that he had other constituents give two weeks, which he said was sufficient, to add testimony to the hearing. I offer that to you three gentlemen for two additional weeks if you need that time for others to testify. And your testimony will be included in the record along with those that come from the other side.

Mr. Bennett, you were excellent. I do thank you.

Mr. BENNETT. Mr. Chairman, I think that sums up what I had to say.

Senator FORD. Okay. Thank you. Thank you all very much.

I look forward to maybe one of these days things will be grand and glorious and there will be no problems on the horizon. Thank you.

Mr. BELL. Thank you, sir.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR FORD AND THE ANSWERS

QUESTION #1: The first panel of witnesses today argued that this is an issue affecting interstate commerce. You say it is a local issue. I'll ask you the same question I asked them. Who is right? How can we decide?

ANSWER #1: It has always been our position that the issue here is one dealing with a local economic regulation. Whether or not ground transportation is interstate or intrastate is not the issue. Nevertheless, to answer your question, the courts uniformly have rejected Commerce Clause challenges against airport gross receipts fees. See in this regard Toye Brothers Yellow Cab Company v. Irby, 437 F.2d. 806 (5th Cir. 1971); Salem Transportation Company of New Jersey et al, v. The Port Authority of New York and New Jersey, 611 F.Supp. 254 (S.D.N.Y. 1985); Transport Limousine of Long Island v. The Port Authority of New York and New Jersey, 571 F.Supp. 576 (E.D.N.Y. 1983). In any event it is well established that the Commerce Clause protects the flow of commerce, not Alamo's or Thrifty's decision to structure their business in a particular fashion. See Exxon Co. v. The Governor of Maryland, 437 U.S. 117 (1978).

We think it is perfectly obvious that the airports are correct in feeling that the regulation and charges for ground transportation is a local issue. Ground transportation conditions can and do vary widely from airport to airport in terms of the availability of the off-airport services supplementing airport concessionaires or franchisees. The availability of other transportation modes also may vary widely among airports. That is why airport operators always have insisted and still do insist on retaining discretion in their pricing policies so as to be able to provide the most appropriate mix of ground transportation options in accordance with their primary obligation to the convenience of the airport patron.

Consequently, we urge this body to be very chary of setting up federal restrictions on airport pricing policies. These restrictions would set a dangerous precedent by which other business interests could petition for fee relief from Congress. More importantly, however, it would be extremely difficult for Congress to set a single standard for what constitutes a fair and reasonable airport fee. We don't believe that this body wants to turn itself into a price regulatory commission for airports, each one of which has a unique set of circumstances.

QUESTION #2: Alamo and Thrifty rental car companies argue that the gross receipt fee has no relationship to actual use of airport facilities. Accepting this as fact, why do aiports impose this type of fee?

ANSWER #2: We are constrained to accept this statement as fact. The courts at both the state and federal level, the most recent being the 11th Circuit Court of Appeals last August in a case brought by Alamo, have recognized that off-airport car rental companies, no less than airport tenants, receive benefits from the presence of the entire airport. Indeed, we have no reluctance to assert that these businesses owe their very existences to the air passenger or air freight markets created by the airport operators as a result of multi-million dollar capital outlays made by these governmental agencies, performing what has always been held to be a governmental function. Each user of the public airport receiving substantial commercial benefits from such use, must be expected to make a substantial contribution toward its cost, maintenance and operation. A congressional requirement that the airport operators segregate out various cost centers and charge only some measure of the use of those centers, completely ignores this now well-settled fact of aviation life, leaving the airport operator unable to recoup such costly items as administrative costs from these commercial users.

In fact, there is no reason to believe there is anything inherently discriminatory, unfair or unreasonable about a fee based upon a percentage of gross receipts. We believe it is a uniquely fair and easy way to recoup airport costs. Percentage fees reflect the volume of actual business conducted; thus, they make it easier for new and smaller businesses to enter the market since their gross receipts fee at first may indeed be less than a fixed flat fee. Moreover, the gross receipts fee fluctuates seasonally so that these airport businesses pay less in the slower travel seasons.

QUESTION #3: What other types of fees do airports impose on off-airport businesses?

ANSWER #3: Airport charges to off-airport companies vary widely, reflecting our contention that such methods are based on local circumstances and objectives. For taxis and limousines, most U.S. airports charge a per trip per vehicle fee, although many small airports charge a percentage of gross receipts against a minimum monthly guarantee, or per company per year method.

For off-airport rental car, hotel, parking lot and airline crew courtesy vehicles, most airport charges are flat fees per vehicle per year, whereas others charge these companies flat fees per company per year, per vehicle per quarter, per vehicle per month, per company per month, per vehicle in the fleet, or in the case of hotels a flat fee per room per year.

For off-airport inflight caterers who bring trucks onto the airport to deliver meals to airlines, all airports for which we have records charge percentage of gross fees.

To a great extent, airport charges on off-airport companies reflect the tremendous growth in the number of businesses that want to serve and profit from the airport. In situations where off-airport companies compete with on-airport companies, airports are often compelled to impose off-airport fees at adequate levels to ensure such businesses are not given an unfair competitive advantage or subsidy, which could otherwise cause on-airport companies to move off-airport. This would in turn cost the airport severe revenue loss which all airport consumers would be forced to make up through higher charges.

QUESTION #4: If the concern of the airport managers is simply revenue, couldn't you simply establish a flat access fee that would recover an equal amount of revenue to that generated under a gross receipts fee?

ANSWER #4: A flat access fee is more difficult for the airport operators to administer. In some cases the cost of administering and collecting the fee may actually exceed the revenues to be raised. Moreover, it lacks the elasticity which commends the percentage of gross receipts fees to the airport operators and, we feel, should also to the airport businesses. As we have noted, the gross receipts fee is responsive to the volume of business acutally transacted at the airport. A high flat fee would penalize smaller companies who would face upfront, fixed "doing business" costs which could prevent them from either entering the market or surviving. These smaller companies would in effect be forced to subsidize the larger off-airport businesses, since they would pay a disproportionately larger amount relative to their business volume.

In any event, it is quite obvious that Alamo's and Thrifty's objection is not to the method of collecting the fee but to the amount they must pay. Indeed if the airports could establish a flat fee at a level high enough to generate the same revenues as the gross receipts fee, these entities would still be complaining of excessiveness and they would not benefit from seasonal relief. Further, raising revenues is not our only concern. Airports also need to preserve existing revenues and must have the ability to treat different classes of airport users differently in order to manage and allocate airport facilities efficiently and fairly for the benefit of all users and consumers.

QUESTION #5: The first panel argued earlier this morning that airports are not politically accountable to those who ultimately must pay these fees and therefore have every incentive to abuse their monopoly power. What is your reaction to this assertion? Does it affect how you impose airport user fees?

ANSWER #5: This argument seems to have gotten turned on its head. Airports in the U.S. are a function of state and/or local government, are accountable to the elected or appointed officials of those governments, and are performing what has always been held to be a governmental function. Unlike the off-airport car rental agencies which are challenging the airport operators on this issue, airports don't distribute profits to partners or to shareholders. Instead, airport revenues are plowed back into public projects for the benefit of the surrounding communities and the traveling public. What, therefore, is the incentive for the airport authority to, in the terms of the question, "abuse . . . monopoly power"? In this regard, we feel it important to emphasize that Congress must be chary of allowing profit-making, private companies to obtain a veto power over the decisions of public officials on whether improvements to public facilities are really important.

It must always be remembered that the airport operator has the congressionally imposed obligation to keep the airport self sustaining and to that end, to set appropriate fees and charges. These fees are often subject to negotiations with companies seeking to do business at the airport. As a practical matter then, airport fees are indeed sensitive to market forces.

Most importantly, however, airports must provide, allocate and manage airport facilities for the benefit of the greatest number of consumers -- those whom the airport is charged to serve and is ultimately accountable -- not just the small segment of car rental users.

QUESTION #6: Currently under law, there is no private right of action under the Airport Improvement Program. Do you support a continuation of this policy?

ANSWER #6: The Airport Improvement Program creates what is essentially a contractual relationship between the Department of Transportation and the airport recipients of federal aid funds. Therefore, the appropriate mechanism for resolution of alleged violations of the contractual grant conditions is DOT, or more specifically the FAA. Otherwise the spectre of the airports engaging in a multitude of litigation with a multiplicity of plaintiffs charging some violation of the various grant conditions looms large and forbidding. That is why Courts ordinariliy have found that grant-in-aid statutes do not create private rights of action. We feel that is a proper result and strongly urge its continuation.

[Whereupon, at 11:48 a.m., the subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF ROBERT J. AARONSON ON BEHALF OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

My name is Robert J. Aaronson and I am Director of Aviation for the Port Authority of New York and New Jersey, operator of John F. Kennedy International, Newark International and LaGuardia Airports. This statement is being submitted for the record with regard to the hearing held before the Subcommittee on Aviation on September 17, 1987, concerning charges and fees imposed by airport operators on airport-related businesses.

The Port Authority is vigorously opposed to the attempt, which is being spearheaded by a group of airport-related businesses led by Alamo Rent-A-Car, to have Congress impose a statutory limitation upon the traditional rights of the airport operator to reasonably classify users of airport facilities and to raise revenues by levying fees or charges upon businesses for their use of airport facilities and/or for their access to the air passenger or air freight markets that the airports provide. In a very real sense, airport-related businesses such as Alamo, even though they may be physically located outside airport grounds, owe their very existences to the markets which have been created by the multi-billion dollar capital outlays made by airports. For example, over the next five years the Port Authority plans to spend $2.5 billion in capital improvements at Kennedy, Newark and LaGuardia Airports. As the United States Court of Appeals for the Eleventh Circuit just last month recognized, in turning back a constitutional "equal protection" challenge by Alamo Rent-A-Car to Sarasota airport's fee schedule: "The Authority could rationally conclude that *all* car rental companies receive benefits from the presence of the airport." (Emphasis added.)

As entities of state and local government, it is the airport operator's highest priority to provide the most appropriate mix of services at the least amount of cost for the convenience of airport patrons. Under these circumstances, we believe that it would be highly inappropriate for Congress to enact statutory limitations on the ability to reasonably classify and decide how much or what type of fee may be charged to a particular groundside airport-related business. Such legislation would be a radical and unwarranted intrusion into the prerogatives of state and local government, and a departure from the traditional concept of airport financing in an area wholly unrelated to the Congressional interest as expressed by the Airport Trust Fund. In this regard it should be noted that Congress has long recognized the reliance of the airport operator upon these types of fees. Indeed, the legislative history of the anti-head tax statute, 49 U.S.C. § 1513, clearly and unequivocally established that Congress has acknowledged the fact that the nation's airport operators rely on revenue derived from such fees, to wit:

"The remainder must be obtained from airline and other users of the airport facilities, including concessionaires, or be absorbed by the parent local government through subsidy." 1973 *U.S. Code Cong. & Ad. News* 1434, 1439.

Another important factor to keep in mind in considering Alamo's arguments for a Congressionally imposed limitation upon the discretion of the airport operator to classify and impose charges or fees on groundside airport businesses is that such businesses do not contribute to the Airport Trust Fund. Indeed, trust fund monies are generally not available to the airport operator for non-aeronautical areas or to defray administrative costs and in fact cover only a very small portion of the overall cost of operating an airport. At the same time, however, Congress explicitly requires that the airports applying for trust fund monies must assure the Secretary of Transportation in their grant applications that they will "maintain a fee and rental structure" that "will make the airport as self-sustaining as possible". See in this regard 49 U.S.C. § 2210(9).

Finally, although we firmly believe that no legislation is appropriate, the airport operators have been more than forthcoming in attempting to resolve complaints by the airport-related businesses. What the airports cannot compromise on, however, is their statutory duty to manage their facilities by reasonably classifying various users of airports and imposing charges or fees on such users. In this regard, we believe that it should not matter to any particular type of airport-related business, such as rental cars, whether a non-competitive service, such as hotels, is charged the same or a similar type of fee. Indeed, an airport should have the discretion, in its efforts to encourage certain types of services for the benefit of airport patrons, to not charge any fee whatsoever to a particular type of airport-related business. Again, as the Eleventh Circuit recognized in upholding the gross receipts fee charged Alamo at Sarasota airport: "The distinctions [the Authority has drawn] are based upon its rational assessment of the relative benefits and the extent of use of each character of vehicle that enter the airport."

In sum, Congress should neither interfere with the necessary right of airports to manage their facilities by reasonably classifying different categories of users, nor should Congress enact limitations upon the airport's discretion in levying fees or charges on airport-related businesses. This dispute should be solved at the local level or, failing such resolution, by the Courts.

STATEMENT OF THE AIR TRANSPORT ASSOCIATION

The Air Transport Association (ATA) is pleased to submit a statement on behalf of its members concerning the business relationship of off-airport companies and the nation's airports. The keen interest of ATA and its airline members in this matter is based on two factors—airports financial strength and costs to the airlines.

The self-sufficiency of the nation's major airports is the product of cooperation and interdependence involving the airport proprietor, the airlines serving the airport and the businesses who compete vigorously for the opportunity to conduct business on the airport. This system has worked well over the years and the airline industry sees no valid reason for federal legislative intervention.

The revenues derived from the on-airport rental car companies is second only to public parking lot payments in the area of non-aeronautical revenue generated on airports. The Airport Operators Council International advises that at the top 30 U.S. airports in 1986, the on-airport rental car companies paid the airports fees totalling $171,359,000 for the right to do business. The off-airport businesses, including rent-a-car companies, argue that they should only pay for the airport facilities they actually use and not pay on the basis of the business derived from the airport. If such a provision were enacted into law, there would be no reason for those rental car companies which traditionally do business on-airport to continue to do so.

No businessman is going to pay millions of dollars in franchise fees when he can conduct the same level of business for a fraction of that amount outside the airport boundaries. Federal legislation based on the actual usage principle would have an almost immediate and certainly adverse economic impact on the airlines and their passengers. The projected revenue derived from on-airport rental cars is an integral part of the complex financial tapestry necessary to underwrite the major capital projects required to keep pace with the dramatic growth of air travel.

Developing a scenario which would enable the traditional on-airport rental car business to move with immunity off-airport, would force airport proprietors to dramatically increase airline terminal rental and landing fees to make up for the shortfall. The magnitude of these increases are exemplified by one major southern airport which stated that the loss of its almost $7 million in rental car revenues would result in a $40—or 182 percent—per square foot per annum increase in airline terminal rent or an increase of 75 cents—or 117 percent—per thousand pounds in the landing fee. Increases of this magnitude must be passed on to the passengers.

At most major airports, real estate constraints now require rental car customers to be bussed to the storage facilities of the on-airport operators just as the passenger must be bussed to an off-airport facility. Our research further shows that the overwhelming majority of rental car customers for both on-airport and off-airport vehicles have a prior reservation. The on-airport rental car companies pay a very substantial fee for the privilege of getting the first crack at the infrequent, walk-up rental car customer.

Passenger of legislation ostensibly aimed at eliminating discrimantion could well have the opposite effect if the end result is an off-airport movement by rental car companies who could be assured of being out of the economic grasp of the airport proprietor. The person who will be discriminated against is the rental car customer, who also happens to be an airline passenger, who will necessarily carry the burden of making up a very large revenue shortfall through a more expensive ticket.

We urge the Subcommittee not to take action on this matter.

STATEMENT OF DONALD ANDERSON, GENERAL MANAGER, RENTACAR

I understand that your Subcommittee is holding a hearing on the issue of airport access fees, a subject with which I have become very well educated thanks to the 8% gross receipts fee the West Palm Beach airport imposes on my company.

I am sure that you have heard from the airport trade groups about how important it is that they be allowed to charge whatever they want. They have probably also told you that they are treating off-airport businesses fairly. I am taking this opportunity to point out to you that there is an opposing point of view, and I want to be sure that you, and your subcommittee hear it. Since I am unable to be at the hearing I am asking you to please incorporate my letter into the formal record of your hearing on airport access fees.

My company has rented cars to travellers in West Palm Beach for 27 years. It employs up to 30 people in the peak winter season.

I want to illustrate the unbelievable results that the 8% gross receipts fee on off-airport companies will produce and how excessive, unreasonable and unfair that fee is. A lot of my business is seasonal and the winter season runs about five (5) months. My average rental car in the winter season costs about $600 per month. Thus, the total cost of an average season rental contract if $3,000.

Under the 8% gross receipts fee imposed on my company by the West Palm Beach airport authority, my average season customer will pay *$240* to the airport. What use did my customer make of the airport? He got a free ride from the terminal to my rental office and a free ride from my rental office to the airport. Does that sound like $240 worth?

If that sounds pretty steep to you, consider that my most expensive rental car costs $1,100 per month. On a seasonal rental, the airport will collect *$440* for the same ride back and forth to the airport.

This summer I have tried to develop a procedure to tell customers about the gross receipts fee. I put up a big sign in my rental office and I made the gross receipts fee a separate item on the rental contract so that consumers could see what they are paying for. Let me tell you about my experience.

One day this summer, 2 customers were returning their cars at the same time. As my counter staff figured up the bills, one fellow was told he had to pay $8 to the airport under the gross receipts fee ordinance and the other was told he had to pay $48 to the airport. Both customers were transported free of charge back and forth to the airport. The only difference between the contracts was that one was for a few days more than the other. Needless to say, the customer who was charged $48 was irate.

After that experience, I have decided that I cannot continue to keep the 8% gross receipts fee as a separate line item on the rental contracts. If I raise my rates to cover the cost of the gross receipts fee, my company will lose some of its competitive edge. I cannot leave it as a line item on my seasonal contracts because the fee paid to the airport is completely indefensible. As a result my company will absorb the fee this season. I estimate that the 8% gross receipts fee will probably cost my company over $100,000 during the winter season. Ultimately, this cost will be passed along to the consumer either in the form of higher rates, or as a line item on rental contracts.

Senator, off-airport businesses urgently need a federal law that will protect them from overreaching airports. Consumers need protection from greedy airports. I hope that this hearing results in legislation that will require all access fee to be reasonable, fair and non-discriminatory.

STATEMENT OF FRANK A. OLSON, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, HERTZ CORPORATION

I am Frank A. Olson. For the past 10 years, I have been Chairman and Chief Executive Officer of The Hertz Corporation; since June of this year I have also served as Chairman of the Board and Chief Executive Officer of the Allegis Corporation, and President and Chief Executive Officer of United Airlines. I very much appreciate the opportunity to present our views on legislative proposals to prohibit or limit the rights of local airport authorities to impose user fees on off-airport businesses benefiting from airport facilities. During the past few months Hertz has served on the User Fee Task Force convened by Senator Ford, and we are fully aware of the concerns raised by off-airport car rental firms, the airport operators and other on-airport concessionaires.

For the reasons I will discuss, we respectfully request that the Congress not interfere with the efforts of local airports to raise needed revenues through reasonable economic regulation.

I. DESCRIPTION OF HERTZ

The Hertz Corporation is the nation's largest vehicle rental business. We operate out of 1,800 locations in the United States with a presence at approximately 540 airports almost exclusively on-airport. As an "on-airport" concessionaire, we maintain and staff one or more counters in the terminal, and the parking lot and maintenance facility for our fleet is located on the airport property. We believe that this airport presence often provides customers with a degree of better service and convenience; it also enables us to attract a small amount of "walk-up" business (*i.e.*, individuals who decide to rent a car at the airport but arrive with no reservation). In exchange for these limited benefits, however, we pay the airport authorities a substantial sum—typically a 10 percent concession fee on our gross receipts or a guaranteed minimum, whichever is higher, in addition to rental fees for the space occupied in the airport buildings and on the airport property.

But for this presence, our operations are very similar to those of off-airport car rental firms. Like them, more than 90 percent of all our airport rentals are pre-reserved. Many of our customers also bypass the counters entirely and board our buses directly for the rental facility. The days of walking out to one's rental car are long gone at most major airports. Accordingly, if we lost our on-airport presence, our business would not be significantly affected.

II. BACKGROUND

A. Judicial decisions

Alamo Rent-A-Car, Inc. and other off-airport car rental firms, which exist solely to serve arriving airport passengers, have a substantial competitive advantage over on-airport car rental firms because they do not pay concession fees to the airport based upon gross receipts. In recent years, Alamo and others have tried to preserve this advantage through litigation. To date, however, their efforts have generally been unsuccessful.

For example, in late August of this year, the U.S. Court of Appeals for the Eleventh Circuit held that a fee imposed on an off-airport car rental business based on gross receipts from airport rentals was lawful and did not violate Alamo's right to equal protection under the Constitution. *Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Authority*, No. 86–3396, slip op. at 4348 (11th Cir. Aug. 25, 1987). *See also Airline Car Rental, Inc. v. Shreveport Airport Authority*, No. 85–1201, slip op. (W.D. La., Apr. 13, 1987), which also upheld such fees.

B. Legislative efforts

Unable to achieve its objectives through the courts, Alamo, since early this year, has turned to the Congress for protection. Initially, it sought the adoption of an amendment to prohibit local airport authorities from imposing on off-airport car rental companies any fees based on gross receipts. The House Committee on Public Works and Transportation declined to adopt such a measure, and Alamo is now looking to members of this Subcommittee and the Senate for assistance. Moreover, due to the strong opposition from the airport operators, Alamo has modified its position and now seeks, not a complete prohibition of fees but a "fair and reasonable" fee based on its *use* of airport facilities.

III. DISCUSSION

A. Hertz position

As I stated, Hertz served as a member of the User Fee Task Force convened this summer to determine if some compromise could be reached on the user fee issue. We listened and participated in the discussions but were not convinced that (1) a problem exists that requires a legislative solution or (2) the rights of local governments should be curtailed to protect off-airport car rental firms from paying gross receipts fees. The Hertz Corporation strongly opposes any legislation to accomplish this latter objective.

B. Role of Federal Government

The Federal Government should decline to involve itself in the legitimate activities of local airport authorities, particularly those aimed at raising revenue by means that are rationally related to the authority's interests. To do so would establish a precedent that could have broad ramifications. For example, members of the business community and professionals could urge Congress to prohibit states from imposing taxes on their service-sectors, as the State of Florida did this past July. Preemption or curtailment of the rights of airport authorities by the U.S. Congress would open the door for appeals to interfere with numerous taxation decisions at all levels of state and local government. My guess is that opponents of the Florida tax and many other state and local taxes will be watching the progress of this legislation very closely.

In June, the House Committee on Public Works and Transportation recognized that it was inappropriate to intervene in the issue of airport user fees and so stated in the Committee Report which accompanied the Airport and Airway Improvement Amendments of 1987 (H.R. 2310). The Report said:

"Off-airport companies—The Committee is concerned that airport fees charged off-airport service providers may not in some instances reflect the relative costs and benefits of access to airport facilities when compared to the fees paid by airport tenants. The Committee has decided not to interfere with the prerogatives of the airports to set these fees at this time. However, the Committee will continue to closely monitor the situation."

H.R. Rep. No. 123, 100th Cong., 1st Sess. 24 (1987).

C. Classification of users

Over the past few months, Alamo has organized a coalition, "Americans Against Unfair Airport Fees." That group includes many types of off-airport businesses that use the airport facilities; however, those businesses can be divided essentially into two categories; and airport authorities should be permitted to treat each category differently.

1. Firms that derive economic benefit but also divert revenue from airports

First, there are car rental companies and "park and fly" firms that derive most, if not all, of their income from the airport *and* divert revenue from on-airport concessionaires. These businesses are very similar to on-airport companies; they and their on-airport counterparts both benefit from a well maintained, well operated airport that strives to attract more travelers.

Historically, on-airport concessionaires have paid fees based on gross receipts, typically 10 percent. It is generally accepted that gross receipts provide a reasonable basis for determining payments because they reflect actual use *and* economic benefits from conducting business at the airport. Thus, a fee based on use of the roadways, as Alamo suggests for off-airport firms, ignores the substantial benefits derived by off-airport car rental companies and permits those firms to avoid paying their fair share of fees and costs.

As I indicated, there are some benefits associated with being located "on-airport." Therefore, a fair and reasonable charge to off-airport car rental firms could reflect some differential—a lower percentage of gross receipts than on-airport concessionaires pay. Nevertheless, the essentially "free ride" for such firms should certainly not be mandated by federal legislation.

2. Other off-airport users

Other users of airport facilities derive some benefit from serving the airport but do not typically divert business from on-airport concessionaires. For example, hotels in many cities operate courtesy vans between their establishments and the airport; very few airports actually have hotels on-property.

Local airport authorities would find it very difficult to impose a gross receipts fee on these firms. Most hotels and other similarly situated users would most likely eliminate the airport transportation service to avoid paying such a fee; such transportation is generally not deemed essential to the operation of their businesses. As a result, airports tend to impose a flat fee or a fee based on use on their courtesy vehicles. It is an effective means of obtaining limited revenue.

The Eleventh Circuit in the *Alamo v. Sarasota* case specifically recognized the validity of distinctions in a fee structure among various types of users, stating:

"The *distinctions* the Authority has drawn [in the fee structure] *are based upon its rational assessment of the relative benefits and the extent of use of each category of vehicles that enter the airport.* In establishing these classifications, the Authority need not achieve perfection or mathematical exactitude." (Footnote omitted).

Emphasis added. *Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Air-port Authority,* No. 86-3396, slip op. at 4346 (11th Cir. Aug. 25, 1987).

This and other rulings offer further support for the position that the Federal Government should not impose its judgments on such purely local matters.

D. Consumer concerns

Alamo and its coalition, which includes consumer groups, contend that its lower rates benefit the consumer. This statement is certainly correct, a 10 percent cost advantage provides any company with the ability to charge less. However, Alamo's lower rates benefit a very limited number of individuals renting automobiles at the expense of other airport users. If airport authorities are permitted to increase the tax base by imposing fees on those off-airport firms that derive significant economic benefits from the airports (*i.e.* primarily car rental firms and "parks and fly" operations), they will be in a position to lower the fees for *all* on- and off-airport concessionaires. If revenue needs will not permit an actual reduction, at least there will be downward pressure exerted to prevent fees from increasing. The car rental industry is highly competitive. Therefore, resulting savings will be immediately passed on to the consumer, and because the savings will benefit all concessionaires, those benefits will be given to all renters, not simply to a select few.

E. Unfair burden on On-airport concessionaires and airlines

If Congress prohibits fees on off-airport car rental companies or limits them to fees based on use of roadways, it will place an unfair burden on on-airport concessionaires and the airlines. Airport authorities will be unable to raise additional revenue from new sources and will be forced to collect the majority of fees from those already subject to the gross receipts tax. If this burden becomes too great, Hertz and other on-airport car rental concessionaires will be compelled to move off-airport to remain competitive in the market.

Car rental concession fees and charges for space at the terminal and rental facility usually account for approximately 25 percent of the non-aeronautical revenue collected by airport authorities. Loss of this money will be significant for most airports. The local airport authorities will be forced to turn to the airlines to replace those lost revenues. Substantial increases in fees imposed on airlines will, to some degree, be passed on to the consumer in the form of higher prices, thereby raising the transportation costs for all consumers. Such increases certainly will offset any lower prices provided by off-airport car rental companies such as Alamo.

IV. CONCLUSION

Over the past several months there has been no demonstration by Alamo or other members of its coalition that the imposition of fees on its operations by individual local airports is causing such damage or distortions in the market as to warrant Congressional intervention. Alamo is simply trying to preserve its competitive advantage and avoid paying its fair share of fees needed to operate, maintain and expand the airport facilities from which it derives substantial benefit.

That company has done an effective job of blurring the distinction between off-airport users that divert revenue from on-airport concessionaires and those that do not. It has cloaked itself in a coalition, the majority of which would never be subject to a fee based on gross receipts.

Accordingly, The Hertz Corporation respectfully requests that the Senate follow the same course of action as that taken by the House: Congress should decline to intervene in this issue. As the courts have said, local airport authorities should be free to establish fair and rational economic regulations to achieve the legitimate state and local interest of raising revenue.

Congress should also be deeply concerned about establishing a precedent of interfering and preempting the right of states and localities to design their own tax programs. For if it acts in this case, Congress is very likely to be called upon to intervene and strike down many other taxes in many other situations.

Thank you very much.

THRIFTY CAR RENTAL,
September 28, 1987.

Senator JOHN MCCAIN,
111 Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCAIN: I am the owner of an off-airport rental car company that is based in Phoenix with locations in Tucson and Scottsdale. My companies are all Thrifty Rent-A-Car Licensees. We met briefly in your office Thursday afternoon. I flew all night from Phoenix to attend the hearing on September 17th before the Senate Aviation Subcommittee on airport access fees. Because of time limitations, I was unable to testify personally before the Subcommittee. While I was in the audience at the hearing I heard you ask some very important and probing questions of the witnesses for Americans Against Unfair Airport Fees ("AAUAF"). I thought it would help your understanding of the issue and the urgent need for federal action if I were to address some of your concerns in a letter to you. I would deeply appreciate it if you could have my letter incorporated into the formal record of the hearing to supplement the testimohy that was given.

At the hearing, you expressed a deep concern about the need for federal involvement in the airport access fee issue. Because I share your concern with and distaste for the growth and bloat of government bureaucracy, I think that you raised a valid point. In our system, calls for new federal involvement in economic relationships should be justified. I think that AAUAF has very good reasons for seeking Federal protection from overreaching airports. Let me explain why I think that there ought to be a Federal law requring airport access fees to be fair, reasonable and *non-discriminatory.*,

First of all, Senator, this is not an attempt to create a new Civil Aeronautics Board to regulate courtesy vans operated by off-airport rental car companies or anybody else. AAUAF is seeking legislation that imposes broad and flexible *minimal requirements*. AAUAF's proposal would *not* mean that the airports would have to go see some federal bureaucrat in Washington to implement an access fee system for off-airport rental car firms, hotels, parking lot operators or anybody else. AAUAF's proposal would *not* mean the already overburdened FAA would have to establish an Office of Airport Ground Transportation Permit Review and staff it with economists and regulation writers.

The AAUAF proposal would create a framework within which individual airports could be as creative as they can in establishing access fee systems for off-airport courtesy vans. The AAUAF proposal does not mandate or forbid any particular type of fee system. The AAUAF proposal is premised on a minimal Federal standard for airport access fees. So the level of Federal intervention would be small.

Even though the AAUAF proposal only anticipates slight federal involvement in the creation and implementation of access fee systems, the mere fact that we only want a little federal help is not, in and of itself, complete justification for federal action. In this case, there is adequate precedent for the type of federal action we are seeking. Congress has intervened pervasively to protect aeronautical tenants of airports from discriminatory and unreasonable pricing of fees by airports. The recent move to ensure that cargo aircraft are assessed landing fees on the same basis as passenger aircraft is but one example.

One of the objections the airports have raised to our proposal is that airport access fees are "local business" problems which should be resolved on the local level. They argue that Congress should not concern itself with this problem. Well this is exactly the type of local problem Congress needs to be involved with. Business and, in our case, small business, should be protected against the arbitrary actions of local units of government which distorts competition in the marketplace. Especially where the governmental unit's clear economic interest lies in stifling competition in interstate commerce.

Congressional action is necessary because airports are generally unaccountable, if at all, to local interests. They are small cities in many ways, often they have police powers within their fences, they have the power to issue their own bonds, negotiate their own labor contracts and otherwise run their property any way they see fit. The one thing an airport does not have is *citizens*. Since the out of state or out of town passenger is the ultimate victim of an excessive fee, there is very little incentive for local airport officials to be concerned about its impact. In essence, this was the problem with the airport head taxes that Congress outlawed in 1973.

AAUAF's proposal would force the airports to take into consideration the concerns of the off-airport community before instituting an access fee system. In that way, a reasonable compromise can be reached between an individual airport and the neighboring off-airport companies. The airports have no reason to even consider the needs of off-airport businesses the way things stand right now. Under the Sarasota decision the airports, *as the only unelected legislature in the U.S.*, need only have a minimally rational basis for its fee system. If an airport can show any glimmer of rationality for an access fee system, the courts won't even look at the real economic effect of these blantantly anti-competitive access fee systems. AAUAF's proposal would change this state of affairs and create an incentive for the airports to act in good faith with off-airport businesses.

We are a few small business people, probably less than 5 to 6 in each city, but large in numbers over the country. We do not have the power or money to fight each airport nationwide. Instead of dictating terms to off-airport businesses, airports should negotiate with off-airport companies to reach an agreement of access fee systems which are fair.

Senator, federal action is needed because this is a nationwide problem. Airports across the country will begin instituting access fee programs in the near future because of the Sarasota decision. Litigation on this issue in many different courts will inevitable result in a hodgepodge of rulings which make the law unclear. Just as in the case of head taxes, Congress can then step in and react to the situation. Of course, by that time, many consumers and small businessmen will have been gouged by the airports. Not to mention the U. S. government which is the largest single renter of cars in the U.S. If Congress acts responsibly and anticipates this problem before it gets completely out of hand, the interests of thousands upon thousands of small businesses and consumers will be protected against airports with grandiose dreams.

Another question was raised at the hearing about the "reasonable"standard AAUAF has put in its proposal. You observed that the term "reasonable" could be pretty vague. The point is a valid one. However, the reasonableness standard in the AAUAF proposal has been used by Congress and the courts in analogous situations. For example, in the case of toll bridges on the interstate highway system, Congress mandated that tolls be reasonable and just. The combination of the reasonableness standard and the private right of action creates a balanced series of incentives and disincentives to ensure that airport access fees are fair to airports and the people who use them.

Senator, I assure you that if the fees are non-discriminatory (for example: all courtesy vehicles), they will be reasonable.

In general, the courts have said that the term reasonable means cost based fees. The courts have had wide experience in applying the standard of reasonableness, especially in the area of utility law, where the courts are often called upon to determine how costs ought to be passed on to consumers. The standard may appear vague, but hundreds of court decisions have given it real content.

The key points here are that (1) the facts and circumstances of each airport will weigh heavily in the consideration of the reasonableness of any fee system and (2) the private right of action in the AAUAF proposal creates incentives to keep fees reasonable. The private right of action will ensure that the airports propose fee structures that are not blatantly unreasonable and that the off-airport companies only file lawsuits where they believe the proposed fee system is so unreasonable that they are willing to pay substantial amounts of money in legal fees to challenge the access fee system in court.

In closing, I want to thank you for the time and attention you have given our arguments. I would welcome the opportunity to discuss this in more detail. This is a very serious issue to me, a small businessman, with much at stake. It is very hard to communicated how difficult it is to work with these airport authorities. We are small and they are so politically powerful.

Thank you for your consideration.

Sincerely,

PHIL G. WIZER, JR.,
President.

ROADRUNNER RENT-A-CAR,
Tucson, AZ.

Senator JOHN MCCAIN,
Senate Office Building,
Washington, DC.

DEAR SENATOR MCCAIN: I am the manager of a small, family-owned off-airport rental car company in Tucson. My company is a member of the Americans Against Unfair Airport Fees, and I feel very strongly that Congress has to do something to protect small businesses from excessive, unfair, discriminatory, anti-competitive and anti-consumer airport access fees. I know that you sit on the Aviation Subcommittee and that the Subcommittee held a hearing on September 17 on airport access fees. Because I work for a small company that does not have the financial resources to send me to Washington on short notice at the very end of the off-season, (as I am sure you are aware, the tourist trade here in Arizona is a little slow during the summer) I could not afford to travel to Washington to attend the hearing. Believe me, I really wanted to be there to tell you and the other members of Congress just how badly the small business operator needs a federal law to keep the airports from squashing us right out of existence.

Since I could not be there, it is my hope that this letter could serve as a substitute for live testimony before the Subcommittee. Would you please see to it that this letter is included in the formal record of the hearing so that the Subcommittee will hear my side of this story.

Senator, I believe that the free market is the best economic system in the world. I also believe that governmental involvement in the economy through regulation by the bureacucracy in Washington should be limited to those areas where the government enhances competition, like the antitrust laws, or some strong public need mandates intervention, like FAA regulation of the airlines to promote safety in the skies. I think that we really need less regulation overall than we now have. However, in the case of the airports, some restraints need to be imposed as there is now no real oversight of their actions by any responsible, or responsive, body that represents *all of the users* of an airport. This situation cries out for some minimal protection to be built into federal law so that the free market can work without unnecessary interference from the airport authorities. Let me explain what I mean.

Every first year business student learns that comptition in the market keeps prices down. The Federal Trade Commission put that simple rule into practice when it found that three firms controlled 96% of the airport car rental market and required Hertz, Avis and National to sign consent decrees forbidding them from restraining competition in the future. Since then, a lot of small rental car operators have sprung up and competed with the big companies on the basis of price and service.

Airline deregulation lowered the cost of air travel and put airline tickets within the reach of thousands of people. This travel boom spurred the proliferation of off-airport rental car companies who serve the cost-concious traveller. Has this competition kept prices down? Every single day consumers vote with their feet by boarding shuttle buses for the ride to an off-airport rental car lot. If these off-airport companies disappear, who will compete with the large on-airport companies? That first year business student will tell you that monopolies gouge consumers with higher and higher prices.

Senator, it is highly inconsistent of Congress and the federal government to change the system to promote competition in an industry though consent decreees and selective deregulation of a related industry and then fail to protect the new entrants to these markets when they are faced with unfair competition of a different kind. What the rental car companies are forbidden to do, the airports propose to do for them. Federal law should protect business from *arbitrary* action by a local government which distorts competition in the marketplace. This is *especially* true where a government agency is in partnership with one segment of the industry, in this situation the on-airport rental car firms.

Why are these fees arbitrary? To date, no airport has relied on access fees to balance its budget. Not one airport in the country issued bonds thinking that permit fees for courtesy vans would provide revenue to pay them off. In the cities where these fees exist, I know of no study done to find out how much revenue was necessary for the future needs of the airport, nor on all of the possible sources for the revenue and the distribution of the burden for supporting the airport among the users, nor even just what was going to be done with that money. In the Sarasota case, the court said that the airport was a legislature and that as such raising revenue without any public purpose in mind at all was perfectly permissible. Can you imagine the Congress trying to raise taxes in the same way the airports seek to raise revenue from businesses such as mine?

The airports make it sound as though AAUAF's proposal would leave them poverty stricken and yet, there are only a handful of airports that currently have gross receipts-type access fees. If such access fees are going to make or break the airports, why haven't they been charging them all along? AAUAF is not complaining about the access fees at the other airports because they are, for the most part, reasonable. We are currently fourtunate in that the Tucson International Airport charges a reasonable permit fee to use curbe-side parking for customer pick-up purposes. However, I could see that changing radically if current trends continue unrestrained. Already we have been excluded from the airport's information booth, a service for which we used to pay. We were told that referrals to us deprived on-airport concessions, even though we could serve many of the people *that they turn away,* including drivers under the age of 21 and those not possessing major credit cards.

AAUAF has said time and again, that we will pay our fair share of the cost of maintaining the airport. We use the airport roads like most everybody else, and so are happy to pay fair, reasonable and non-discriminatory fees to keep these roads in good repair.

It is not just the gross receipts fee concept itself that I consider unfair. Inevitably, the fee gets passed on to the consumer in the form of higher prices, or as a separate line item on the rental contract. If the fee is passed on in higher rates, then the rates for all persons who rent from an off-airport rental car company will go up: including rates for people who do not come through the airport. For example, higher rates would be paid by local residents who rent cars because their car is being repaired, or people who come to town by train or (as is common here in Arizona) people who drive down from the snowbelt in the winter in their motorhomes and rent a car to get around town for the days, weeks, or even months that they are here. Raising rates because of an airport access fee would not be fair to them. Do the airports think that everybody who rents a car from a company that is not on the airport should subsidize those who choose to travel by plane? Such fee-driven prices increases are especially offensive if the fee bears no relationship to the use a consumer makes of airport property, as in the example cited above.

Of course, the other possibility exists. Suppose the fee is tacked on as a separate line item on the rental contract? In order to correctly assess the fee, only those customers who ride in a courtesy vehicle should be required to pay the fee. This would require keeping record of which rentals are subject to the fee and which are not. Should consumers have to sign an affidavit that they did not ride the shuttle?

The access fee is absolutely no different from the head taxes Congress outlawed years ago. The effect is the same: the consumer takes it on the chin to support whatever whimsical fee the airport managers come up with.

I have heard that some people question whether an 8% or 10% gross receipts fee on off-airport companies would remove our competitive margin. It would certainly cut into mine. Being a small company it would be tantamount to at least doubling our rent. How many small businesses can handle an overnight 100% to 150% increase in rent? Though, frankly, some off-airport companies would still be less expensive than their on-airport competitors even if they paid such a fee. But, the on-airport companies can afford to cut prices and absorb losses for a long time, certainly long enough to demolish the off-airport industry. That is not to say that the off-airport companies would do that, however, the car rental business is a very competitive industry. It is an economic fact of life that big companies can afford to cut prices to levels that stifle competion without regard to profit . . . with the 8% or 10% access fee they wouldn't have to cut much. Without some limit on the power of the airports to impose access fees on off-airport companies, the airports could conceivably tax us right out of existence.

Senator, the AAUAF proposal would set a very flexible standard which will let individual airports set up whatever type of access fee systems they want for off-airport courtesy vans, as long as the fee is reasonable, fair and imposed on a non-discriminatory basis. The AAUAF proposal will neither outlaw nor require any specific fee system. The AAUAF proposal is an equitable solution that would simply set a minimal Federal standard for airport access fees. I suppose if someone is opposed to the AAUAF proposal then they *want* to see unreasonable and discriminatory access fees. Somehow, that just doesn't make sense.

The airports have complained that airport access fees are "local business" problems which ought to be resolved at the local level. They have been telling you that Congress should not get involved in this local dispute. Take a look at the AAUAF membership list and you will see that this is a "local" issue all across the nation. Almost 300 off-airport companies from many states think airport fees ought to be fair, reasonable, and non-discriminatory. I don't mean to imply that access fees are the equivalent of civil rights, but didn't some people argue that the voter registration laws were merely local matters? Almost every problem that arises is, in some respects, a local problem. The Congress has to look beyond the statements the airports make and see the true effect of their *collective* actions. Ask to see their trade publications, Senator, I'm sure you'll see articles that lay out the way to set up a gross receipts fee. They are not totally independent actors. This is exactly the kind of "local" problem that Congress needs to look into and fix.

Airports are small cities in many ways. They have their own police, they issue their own bonds, adopt ordinances, regulate traffic, and otherwise run their property as they see fit. But airports are without voters.

Access fees that are negotiated between the airports and the off-airport community would be reasonable compromises. Now, the airports have no reason to negotiate with off-airport businesses because the Sarasota decision says the airports only have to have a minimally rational basis for a fee system. The slightest hint of rationality for an access fee system isolates the fee from scrutiny by the courts. Judges can't even look at the real economic effect of these ridiculous access fees. AAUAF's proposal would change this state of affairs and create an incentive for the airports to negotiate in good faith with off-airport businesses.

Federal action is urgently needed to stop the spread of this problem across the country. Now that the Sarasota decision has cleared the way for airports to charge access fees on a minimally rational basis, airports will be like kids in a candy store. If Congress simply leaves this to the courts, the almost certain result will be inconsistent rulings and murky precidents. Just like the head taxes, Congress should step in and protect the many consumers and small businessmen who may otherwise be gouged by the airports. Congress needs to act and resolve this problem before it gets completely out of hand.

Sincerely yours,

TRINA BENNETT,
Sales Manager.

FIVE & TEN RENTALS, INC.,
Seattle, WA, October 1, 1987.

DEAR SENATOR FORD: I am the owner and operator of an independent off-airport rental car company in Seattle, Washington. I came all the way to Washington, D.C., to attend the hearing on airport access fees as the representative of my company and all of the other off-airport rental car firms in Seattle. Because of time limitations, I was not able to present my testimony directly to the Aviation Subcommittee. However, as I sat in the audience at the hearing it occurred to me that you and some of the other Senators are not convinced that airport access fees are a federal issue. I think that my experiences with the Seattle airport authority would help you to see the urgent need for federal action. I therefore respectfully request that you include this letter in the formal hearing record.

The Seattle Airport Authority charges off-airport rental car companies, like mine, approximately $350 a year to drive our courtesy vans onto the airport in order to pick up customers. This charge resulted from a compromise between the authority and the off-airport businesses in 84 after the airport had initially raised the annual fee from less than $360 to about $800 per vehicle.

However, those negotiations took place before the recent decision in the Sarasota case. Now, all that an airport has to show is that there was some minimally rational basis for its actions and off-airport companies that are being gouged by the airports can't even get a judge to look at the facts. The Authority is now proposing a 10% gross receipts fee on off-airport companies, and the law says that they don't have to give their plan a whole lot of thought. This time around they probably *won't* negotiate with us over the fee UNLESS there is a federal law that requires access fees to be fair, reasonable, and non-discriminatory.

We need a federal law for the same reason Congress decided to step in 15 years ago and forbid head taxes. These fees, which are wildly out of proportion to the use my company makes of airport property, are a burden on interstate commerce. These fees will stifle competition in the car rental market, and increase costs to consumers without any corresponding benefit in service. When it is cheaper to take a taxi from the airport to my car lot than it is to pay the access fee for a ride in a free courtesy van, somethig is definitely wrong.

We only use the airport roadways to pick up and discharge passengers. We don't have signs or telephones in the airport because they won't let us, even though we have asked and offered to pay reasonable fees for the privilege. If the airport wants to collect 10% of the gross receipts of the off-airport opreators, then the off-airport companies should have the option of coming on the airport.

The airport out here has tried to make life difficult for the off-airport operators. For example, on many occasions, my courtesy vans have been harassed for taking too long to load 10–15 passengers and their luggage! A single van that carries 15 or 20 people is a much more efficient people mover than 20 passenger cars. Yet the airport hassles my drivers, for loading. It is not just rental car companies out here that get hassled by the airport, travel agents, hotels, and motels have suffered the same harassment. The airport's unfair actions have forced me to discontinue the use of the vans and, instead, pick customers up in the vehicle which they have rented. And, even though I don't run a van anymore, the annual permit fee remains the same.

The proposed charge by the authority of 10% of annual gross receipts threatens the future viability of off-airport businesses. Pacific Car Rental—also located in Seattle—could pay over $100,000 to the airport annually under the proposed charge, which would probably drive the company out of business. The same unfair consequences could happen to American International in Seattle. Both of these companies are larger than Five & Ten.

Furthermore, the 10% charge would preclude me from expanding my business, thereby effectively preventing me from ever selling the company due to its lack of growth potential. This is especially unfair in my case since airport customers account for only about 30% of my business.

I also want to point out that the AAUAF proposal has another feature which is a good idea. The *Sarasota* decision points out how little effort an airport has to make to justify an access fee system. If all they have to do is be minimally rational when they adopt a fee, they sure don't have to spend a lot of time thinking about it. The AAUAF proposal includes a private right of action which will let off-airport companies bring a lawsuit on statutory grounds, rather than having to sue on constitutional grounds. My lawyer friends tell me constitutional lawsuits are hard to win because the judge rarely gets to look at the economic facts. We need to be able to get to these kinds of facts in these cases, if a fee is unreasonable then a court ought to be able to say so. Courts, and juries, examine all kinds of things everyday to find out whether they are reasonable, so they know how to do it. The AAUAF proposal would let them bring their collective good judgment to the airport fee situation. The private right of action and the reasonableness standard establish a good balance and put off-airport companies in the position of being able to defend themselves against the airports. The AAUAF proposal would level the playing field. Therefore, I urge Congress to curtail the wide latitude of power now possessed by airport authorities. In sum, all I ask for is fair treatment.

Sincerely,

THOMAS M. WHITLEY,
President.

GENERAL RENT-A-CAR.

Senator WENDELL FORD,
Chairman, U.S. Senate Aviation Subcommittee,
Washington, DC.

DEAR SENATOR FORD: I attended the hearing on airport access fees held before your Subcommittee on September 17. Because of time limitations, I was unable to testify before the Subcommittee, However, I would like the Aviation Subcommittee to hear about my experiences in coping with a gross receipts fee at West Palm Beach and the chain of events by which the airport authority forced the gross receipts fee on off-airport companies without notice or chance to present our point of view in advance. I also would like to respond to a point you raised at the hearing on bed taxes. Therefore, I respectfully request that this written statement be inserted into the formal record of the Aviation Subcommittee's hearing on airport access fees.

I am the manager of General Rent-A-Car at Palm Beach International Airport in Palm Beach County, Florida. I have had several unpleasant incidents with customers in the last couple of months trying to explain the Airport Authority's resolution imposing an 8% gross revenue fee on off-airport rental car companies for an access permit to enter the airport.

As an example, I have one regular renter who has been a customer of General for almost a year and a half. He rents a Cadillac from us at a rate of $39.95 a day and stays five or six days. He informed me on his last trip on September 15 that General is no longer competitive enough because of the added 8% fee. He told me he could get the same rate of $39.95 a day for a Lincoln Towncar from an on-airport agency and *not* have to pay the added fee. Here is a situation where the on-airport company, because it is a big operator, can afford to match my rates on my lead car even though he can't match my rates on many other classes of equipment, and the gross receipts fee pushes my rate up by about $3.00 a day. So now my customer thinks I am trying to rip him off. When the on-airport company pays his concession fee, he is paying his rent for space in the terminal and for his service areas. He gets something for his concession fee. For the 8% my company pays the airport, we get to drive on the road. This access fee greatly reduces our competitiveness with on-airport agencies.

Another example which has come up more than any other and is totally unfair to the consumer is the way the fee affects different rental rates and different lengths of stay for the same one time in, one time out access of the airport.

Let me give you an example, a few weeks ago I had a customer who rented an economy car for one week at a rate of $47.69. His 8% access fee came to $3.82. Another customer rented a small van for a week at a rate of $209 and his 8% fee came to $16.72. Both customers just happened to arrive at and leave my rental counter at about the same time. Needless to say, the customer who was charged $16.72 was very upset. I myself could not explain to him why he was paying more for the same ride to the airport.

This holds true with the length of stay. The greater the length of stay the higher the fee for the same actual amount of airport access.

Adoption of the Resolution: On January 27, 1987, the Palm Beach County Board of County Commissioners adopted a resolution, designated R-87-124, approving a new West Palm Beach International Airport Permit Program for Non-Concessionaire Car Rental Companies (the "Permit Program"). Among other impositions, the Permit Program required off-airport rental car companies to pay the airport 8% of their gross receipts derived from customers picked up at the airport.

The conception of the Permit Program, the passage of the adopting Resolution, and the subsequent disposition of the plan were colored at the outset by the Airport and County authorities' complete disregard for obligations of timely public notice.

Although the January 27 meeting was described by the County as "regularly scheduled" and "publicly announced," the notice of that meeting posted at County Hall did not mention the proposed imposition of the 8% fee, and no published notice appeared elsewhere. Furthermore, no advance notice of the meeting was provided to interested parties, obviously including the off-airport rental car companies. Gordon Selfridge, the Palm Beach County Attorney who approved the Resolution, was well aware of the strong interest of General Rent-A-Car and Alamo Rent-A-Car in the Permit Plan, as a result of their dispute with the Airport the previous summer regarding the removal of off-airport rental car courtesy phones and advertising. The Airport's failure to provide notice effectively prevented the rental car companies from stating any case against the Permit Plan before the County Board.

It appears that the Airport and County were entirely unaware of any obligation to inform interested parties of their actions regarding the R-87-124, even after the fact of its adoption. Upon advice of outside counsel, a notice describing R-87-124 was hastily mailed by the Airport to all car rental agencies listed in the yellow pages three days after the Resolution was adopted. Any requirement for such a mailing seems to have been completely unexpected by the Airport, despite their immediate notification of Hotels and Motels of a resolution regarding shuttle buses adopted on the same day. The notice to the rental car companies was prepared in such haste that Airport staff prepared certified slips at the post office, and copies of new Shuttle Bus regulations were mistakenly left out of the envelopes. Copies of a memorandum from the airport manager explaining the need for petty cash to pay for postage on the notices sent to the rental car companies and the letter advising us that the regulations which we should have gotten with the notice were enclosed.

The Board withdrew its original Plan in the face of strong opposition in February. Consideration of the Plan was then rescheduled for March 30, 1987. Counsel for the off-airport car rental firms met with the attorney for the Board a couple of times before the March 30 Board meeting. However, despite the intense interest of the off-airport rental car companies and the presence in the meeting room of numerous representatives of those companies, the Board denied the off-airport companies an opportunity to voice their opinion at the public meeting. The Plan was adopted by the Board without discussion as the Board voted on and approved a measure that would have a tremendous impact on our businesses without giving us a chance to say our piece. The Board's procedure in this matter makes an absolute mockery of "Due Process." The Board's contempt for our concerns and total disinterest in our point of view was highlighted by the almost limitless debate the Board permitted, indeed encouraged, over the selection and placement of various types of flowers in an airport beautification project.

Even more infuriating, the new Permit Program was effective the day of the Board's meeting, March 30, 1987. Soon after being informed of the Airport's actions, General Rent-A-Car filed a lawsuit in U.S. District Court opposing the 8% fee. In order to avoid litigating a temporary restraining order, the County was willing to discuss an interim agreement with the rental car agencies as to the disposition of the Plan until the Alamo suit was resolved.

The Airport authorities did not meet with representatives of the off-airport rental car operators regarding the new Permit Program until March 31, 1987, a day after the program had been intended to take effect. At that meeting, Alamo proposed a flat-fee interim agreement until legal objections to the new permit plan could be settled in court. This proposal was never seriously considered by the Airport or the County. In a letter of April 16, 1987 to the Attorney for General Rent-A-Car, the County Attorney stated that Alamo's proposal "would be considered in full after the initial implementation of the permitting process and/or accompanying lawsuits and stipulations are in place." In other words, the Alamo proposal would not be considered until the alternatives being sought by the Airport were already obtained. The County did provide advance notice of a County Board Meeting at which the disposition of the Plan during the interim period would be determined.

The Airport recommended to the County that the Alamo flat-fee proposal be ignored, and instead that rental car companies be required to set aside the 8% fee, and be required to stipulate that they will abide by any decision in that lawsuit. These terms were ultimately adopted by the County Board.

The authorities in this case clearly failed to inform local business of a plan that would severely affect their operations and competitive position. These events further indicate that timely notice could have prevented unnecessary litigation, as well as allowed for a greater voice in the making of public policy for those most affected by it.

Bed Taxes: The question raised at the hearing on bed taxes is a tough one and I have asked my corporate office to help me out with this section of my letter. So I want to be sure to give credit where credit is due. Bed taxes and airport access fees are different types of charges and should not be considered as the same thing. The biggest difference between the two is that a bed tax is imposed by some type of political entity, like a city council or a state assembly, that is elected by the voters in a community or state. These charges are imposed on all hotels, in the places that have those taxes not just on those travellers who use courtesy vans at the airport. They are identified as taxes, usually. Airport access fees are imposed by an airport authority that is appointed by some official, like the mayor or governor, or a board of commissioners who are elected or appointed by some other local power. Airports are not responsive to the voters because they have no to run for election. The people who pay the taxes don't elect the people who run the airport.

Another point to keep in mind about bed taxes is that they are not charged everywhere. Some places have them and others do not. A bed tax may be anywhere from 1% to 10%, it shows up as a tax on the bill, it goes to the general revenues of a city, county or state or maybe a convention bureau. In some cities, the bed tax revenue is used exclusively for tourist promotion or other things which bring visitors to the area. The hotels benefit from the increased tourism and have sometimes brought lawsuits to prevent a government from using that money for non-tourism purposes. The hotels get a benefit for the bed taxes they pay, and when a city tries to use the money for something else, then the hotels put up a fight. There is a world of difference between bed taxes that pay for ads in New York newspapers to tell people up there to visit Miami in the winter and to stay in Miami hotels, and airport access fees which are collected by the airport without a specific purpose in mind, and which really protect the big on-airport companies from price competition from off-airport companies. The airports are helping the big guys gouge the customer.

Even though the hotels in some communities pay bed taxes, rental car firms pay special taxes in some places that hotels don't pay. For example, in Chicago the city collects a tax on each rental contract and a tax on the total rental contract based on the value of the contract. These revenues go to the city of Chicago and are used to support all of the things the city does, for the benefit of all its citizens. You can't put a bed tax on a rental car company because we don't have beds. Neither can you put a fleet charge on a hotel because they don't have fleets. So for unique aspects of a business, you get unique taxes and these unique taxes should not be a factor in charging access fees at an airport. For similar types of activities, then you should pay similar types of USER FEES. That is what we are talking about in the case of airports.

I hope the Subcommittee finds my comment and opinions useful. I also hope that Congress can help protect us from the arbitrary and anticompetitive actions of the airports. What we are asking for, Senator, is fair, reasonable and non-discriminatory airport fees based on usage for such access to the airport.

Sincerely,

MICHAEL F. CUNNINGHAM.

AVIS RENT A CAR SYSTEM / 5207 MONKHOUSE DRIVE, SHREVEPORT, LOUISIANA 71109-6599 / (318) 631-1839

AVIS
LICENSEE

AIRLINE CAR RENTAL, INC.

September 11, 1987

Senator Wendell Ford
Chairman of the Senate Aviation Committee
United States Senate
Washington, D.C.

Dear Mr. Chairman:

Please accept the following information as presented by myself for your benefit.

Airline Car Rental, Inc., a closely held family corporation, was formed on June 1, 1950, and does business as an Avis Rent A Car System Licensee in Shreveport and Monroe, Louisiana. We continually operated our car rental business on the Shreveport Regional Airport property until September, 1977, and continue to operate our car rental business in Monroe on the Monroe Regional Airport property.

In July, 1977, the Shreveport, Louisiana, car rental concessioners met with the management of the Shreveport Regional Airport to discuss the upcoming bid proposal for the three car rental locations at the Airport. At the meeting, management informed the prospective bidders that additional fees were to be assessed and that each successful bidder would be required to build new car rental service facilities on airport property which we would own for ten (10) years after which, the building would revert back to Airport property and would in turn be leased back to the current car rental concessioners. The car rental concessioners tried unsuccessfully to negotiate the contract to what was currently a fair and equitable arrangement. Airport management told the concessioners that the contract was not negotiable and we had no choice but to accept the bid contract as presented because, "We are the only game in town and no car rental company could survive unless it did business on Airport property."

Airline Car Rental, Inc., submitted its bid as proposed by the Airport but subsequently was not successful as a bidder for one of the three (3) on-airport car rental locations.

Upon losing the car rental on-airport location, we approached the Shreveport Airport Authority and requested they supply additional space for a fourth car rental concessioner as space was available and by which the Airport would maintain the revenue that they would lose by our vacating the premises. The Authority refused our request and we were told to vacate the airport premises by September 30, 1977.

We relocated our operations off-airport, but in close proximity to the Airport, and commenced using shuttle buses to transport our customers to and from our off-airport location to the Airport. The facilities that we now occupy cost approximately $748,000.00.

The car rental concession contract was for a period of five (5) years. During that five year period, Airline Car Rental's gross rental revenue averaged $780,781.00 per year. It cost Airline approximately $93,000.00 per year in increased costs by operating off-airport, these costs being for shuttle buses, bus drivers, uniforms, increased insurance, gasoline expenses, etc. Due to the investment in facilities and buses, Airline was unable to bid on one of the, now four (4), on-airport car rental locations in 1982.

During the ensuing period Airline Car Rental, as an off-airport car rental operator, is not permitted to solicit business on the Airport. Airline's shuttle buses are required to park only in areas designated by the Airport Authority. Our shuttle bus drivers are not permitted out of their buses except to open bus doors for their passengers. Our shuttle operations are conducted solely on the streets and roads of the City of Shreveport, not on airport property, which provide access to the terminal buildings.

No on-airport car rental companies at the Shreveport Regional Airport have moved to locations off-airport since Airline Car Rental vacated the premises. Airline Car Rental, Inc., did not voluntarily move off-airport but was required to move by the Shreveport Airport Authority.

On April 1, 1985, the Shreveport Airport Authority adopted a resolution which established regulations affecting car rental agencies which do not have a concession from, or lease with, the Authority. Among other things, the regulations provide for the payment by such businesses of seven per cent (7%) of their gross receipts to the Shreveport Airport Authority.

The market of supplying rental cars to patrons has become more competitive in recent years. Profit margins of car rental companies have dropped with the increased competition. Various airports around the nation have granted economic relief to the on-airport car rental companies to allow them to remain competitive. Certain car rental companies have moved off-airport because they could not compete in the market under the burden imposed by fees charged on-airport companies.

The Shreveport Airport Authority maintains that they are a participant in the market place and not a regulator. The only reason for the resolution is so that the Airport can maintain operating revenues that the car rental concessioners provide and to prevent any other car rental concessioners from leaving the Airport.

We agree that the Airport needs such revenues to maintain funds with which to operate. We likewise agree that the Airport should charge fees commensurate with use of the Airport properties. We do not agree with the method chosen nor the amounts.

It is fair to say that we derive benefits from the Airport and its patrons. It's also fair to say that any business derives benefits from services provided by a government agency, i.e. public streets, court houses, state health facilities. But, at what point does a government agency have a right to go beyond the normal collections of revenue to the point of controlling a specific market? It is the position of Airline Car Rental, Inc., that the Shreveport Airport Authority has now placed themselves in that enviable position.

In July, 1987, the City of Shreveport provided the bid specifications for Automobile Rental Concession for the Shreveport Regional Airport. Among other things, the Airport Authority has increased its fees to the on-airport concessioners over twenty-five per cent (25%). The prospective concessioners once again met with Airport management to negotiate a more reasonable contract. The Airport Manager's response to this was, "There will be no negotiation on the percentage fees charged to on-airport car rental concessioners, and your only alternative to this is to leave the Airport and to be charged the fees of the off-airport car rental companies."

We believe that this is the Airport's willful ability to control a market and to fix fees as it sees fit without negotiation. At what point is this fair and reasonable or pure monopoly?

As you are aware, Airline Car Rental, Inc., has sought relief through the Federal Court System. It appears that the Courts agree, as we do, that airports have the right to raise revenues for the purpose of maintaining the airports' operation. The Courts also agree that the fees charged off-airport car rental companies are detrimental to those companies' profitabilities. But, the courts will not and cannot determine what are fair and equitable fees. Therefore, we look to those officials who have the ability to consider these issues and act accordingly based on their knowledge and understanding of small business and the needs of a specific industry. Government agencies should not be in the business of restraining fair trade, nor should small business look for unfair relief from those agencies when not justified.

Airline Car Rental, Inc., it's owners and employees, feel that it is necessary to find a common ground where small business, given a choice, can provide a fair and necessary service to the traveling public without burdensome restraints.

We respectfully ask that you enter this information into the committee's record.

Yours truly,

AIRLINE CAR RENTAL, INC.
Avis Rental A Car System Licensee

W. Randal Scoggin
Vice President

WRS:pc

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

September 16, 1987

The Honorable Wendell H. Ford
Chairman
Senate Subcommittee on Aviation
428 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Mr. Chairman:

The State of Alaska appreciates the opportunity to provide comments on proposals regarding off-airport user fees.

The proposed prohibition on gross receipts charges to off-airport users would threaten an airport operator's ability to retain on-airport car rental companies and the revenues which they provide. At Alaska's two major international airports, Anchorage and Fairbanks, on-airport car rentals annually generate $1.2 million and $200,000., respectively. That equals about three percent of Anchorage International Airport's, and six percent of Fairbanks International Airport's, total annual revenues.

The off-airport user fees could cause an exodus of on-airport car rental companies and result in the loss of an important source of airport revenues. The traveling public would also lose the convenience of on-airport car rental service. Special treatment proposed for off-airport users would force on-airport tenants to pay a larger share of the landside development costs, in essence subsidizing the off-airport users.

Airport managers must be able to ensure that a single user group neither monopolizes, nor is prevented from using, the available landside facilities. If airports cannot manage the landside facilities, they will be less able to prevent an off-airport user from utilizing an unfair proportion of the available landside capacity.

Off-airport interests have adequate legal protection from unreasonable or unjust discriminatory airport policies. Action by Congress on this issue in the Airport Improvement Program legislation is unnecessary and inappropriate. In fact, most landside area development cannot be financed using the Airport Improvement Program.

The State of Alaska urges the Senate Subcommittee on Aviation to oppose legislative proposals that would restrict the airport operators' ability to impose fees and charges on off-airport users.

Sincerely,

John W. Katz for
Steve Cowper
Governor

Thrifty Rent-A-Car
System, Inc.
4608 S. Garnett Road
Tulsa, OK 74146
918 665 3930
Telex 709709
Telefax 918 665 9213

Wm. E. Lobeck, Jr.
President

Thrifty Car Rental

September 21, 1987

Honorable Nancy Landon Kassebaum
United States Senator
Washington, D.C. 20510

Dear Senator Kassebaum:

It was a privilege to appear before the Subcommittee on Aviation on September 17, 1987, to address you and other subcommittee members on the subject of unfair, unreasonable and unjustly discriminatory fees being charged off-airport businesses by airports. I particularly appreciate your personal attendance at the hearing, as well as the efforts of your staff and you to get the subject a fair consideration.

At the hearing, you raised some questions which I hope the written submissions to the subcommittee will answer in more depth than we were able to do at the hearing, but I also want to add my personal observations in response to those questions.

First, you wanted to know if fees charged to our businesses are negotiated. The answer, as is usually the case, is complex. In general, our experience has been that airports take one of two approaches to imposing fees. Either they obtain action from the airport governing board and a city ordinance, or they first try to unilaterally impose fees on businesses on a one-to-one basis and if they fail, they propose a general fee. We have seen particular instances where such fees were imposed without public notice and other instances where such fees were imposed after only the obligatory "public meeting" type notice posted on the door of the meeting room, without any direct notice to those affected by the fees. Sometimes, businesses such as ours DO end up negotiating (or more accurately, agreeing to) a fee rather than face a costly fight, and sometimes we learn about such efforts early enough to mount a local lobby to obtain reasonable results. But in any event, the bargaining power is extremely unbalanced in one-to-one negotiations with the airports or in public debate. Airport directors have all the information, and all the daily contact with the governing boards and city officials, and there is no base standard of fairness required. Prior to the trial court decision in the Sarasota case, airports did not typically even try to justify the fee level they proposed. While that case was on appeal, there was at least a token effort made to present rational bases for fee levels. Now that the Sarasota decision has been overturned by the appellate court, we see signs that airports once again believe they have a blank check and can impose any fee they wish with impunity. For this reason, I firmly believe that there can be little meaningfull negotiation between small businesses and local airports. That is why we need at least a minimal federal standard of fairness, reasonableness and lack of unjust discrimination. Armed with that, we will be able to enter the fray on the local level with somewhat more balanced bargaining power. If airlines, which are not only bigger, but better organized politically, need this protection from predatory practices of airports, it seems appropriate to afford similar protection to small business.

Your second question asked if it was not true that if Congress gives us the relief we ask, the hotels and motels will be knocking on your door next for similar relief. The answer to that is simple. The hotels and motels are knocking on your door now, along with us. The coalition includes hotels, motels and some of their associations, each of which is asking for the same type of protection we seek. We believe that legislation can be fashioned to address their needs as well as ours at this time, ending the threat of a later barrage by that industry seeking similar protection.

We at Thrifty, and the other members of the coalition, will be submitting some supplemental material for the record of the hearing, and I hope that material will address any additional questions or concerns you may have. If not, please feel free to have your staff call on me.

Thank you again for your attention to this issue.

Sincerely,

WmE Lobeck

Wm. E. Lobeck, Jr.
President

WEL/jd

Thrifty Rent-A-Car
System, Inc
4608 S. Garnett Road
Tulsa, OK 74146
918 665 3930
Telex 706700
Telefax 918 665 8213

Wm. E. Loback, Jr.
President

Thrifty Car Rental

September 21, 1987

Honorable J. James Exon
United States Senator
Washington, D.C. 20510

Dear Senator Exon:

Thank you for taking your time to listen to my testimony before the Subcommittee on Aviation on September 17, 1987, and for giving us the opportunity to respond to your concerns regarding legislation we propose concerning airport fees on off-airport businesses.

You have raised the issue of whether federal intervention in this issue is appropriate at this time. You particularly want to make sure that we have exhausted our state and local remedies before approaching the Congress of the United States. I wanted to briefly share with you my thoughts on this question and invite you to consider the total record of the September 17 hearing, including the written submissions, for a more in-depth discussion.

It has been our experience around the country that airports are operated by quasi-public bodies, usually a trust or airport authority, consisting of appointed officials. Usually, the airport trust or authority recommends passage of a city ordinance containing the fee requirement, which must then be adopted by the city legislative body. There is typically no state agency with any jurisdiction over such bodies on this issue. If such fees are imposed without any notice or without actual notice, or if we otherwise believe them to be unfair, our only resort beyond the city government is to the courts. Under the legislation we propose, we would still have to deal with each locality on the specifics of a fee structure, and that is appropriate. The federal legislation would merely set the same minimum standards of fairness, reasonableness and lack of unjust discrimination which is required of airports in dealing with airlines under existing federal law. We believe that passage of the legislation would balance the bargaining power more evenly and give us a fighting chance to end up with a fair fee structure in each local area, a chance we do not believe we now have.

As soon as legislation is introduced, we will be working with you and your staff further to explain why it is needed and how it would work in practice. In the meantime, if you have any questions or concerns, please feel free to call on me. I thank you for your interest in this issue.

Sincerely,

Wm E. Loback

Wm. E. Loback, Jr.
President

DOLLAR
RENT A CAR

Dollar Rent A Car Systems, Inc.
Executive Offices:
6141 W. Century Blvd.
P.O. Box 45048
Los Angeles, CA 90045
(213) 776-8100 • Telex 673373

September 30, 1987

Honorable Senator Wendell Ford
Chairman
Subcommittee on Aviation
Committee on Commerce,
 Science and Transportation
United States Senate
Washington, D.C.

Dear Senator Ford:

I have recently been made aware of hearings which your subcommittee has been conducting regarding proposed legislation which would restrict the ability of airport operators to charge off-airport businesses use charges or concession fees which are not limited to a compensatory level for the services or access provided to the off-airport business by the airport operator. I understand it is too late to present testimony to the subcommittee but, I do ask that you incorporate this letter into the formal record of the hearing as my views may be of use to the subcommittee as it considers airport access fees.

Our company operates within approximately 120 airports throughout the United States as an "on-airport concessionaire". We have on-airport concessions at airports which collectively represent approximately 90% of the deplaning passenger traffic in the United States. Through our experience, we have an intimate working knowledge of concession fee structures at U.S. airports and airport management's individual and collective thinking concerning the airport access fee issue.

Although we are considered an on-airport operator, let the record reflect that we oppose any fee levied by airport operators on off-airport companies (whether car rental or not) that exceeds what would be a compensatory charge by the airport operator to assist the airport operator in meeting debt and labor obligations for the construction of roadways, maintenance or the policing thereof.

For many years, through 1974, our company struggled to obtain operating privileges from operators at U.S. airports. Time and time again, we were turned away because of airport operator policies that limited the number of concessions (which at that time was 3) awarded based upon the company being able to pay the highest minimum guarantee or behind closed doors on a negotiated basis to the same 3 principal concessionaires. The Federal Trade Commission (FTC) saw fit to initiate action against 3 car rental companies in 1974 charging them with conspiring to limit on-airport competition at U.S. airports. Those 3 companies were Hertz, Avis and National. In addition, our company brought private antitrust litigation against those same defendants.

Primarily as a result of the FTC litigation, in most cases airport operators begrugingly gave access to more than 3 on-airport car rental concessionaires. With less than a handful of exceptions, airport operators today still limit the number of car rental concessions which may operate on the airport. The most common number of concessionaires today is 5 with a few airports such as Atlanta restricting the of concessions to 9 and one major new airport (DFW) which, because of long-term restrictive car rental agreements entered prior to the FTC action, is legally prevented from having more than 4 car rental concessions through 1996.

On one hand, the airport operators seek to limit the number of on-airport concessionaires who can provide a perceptibly better service to the public with counters in the baggage claim area and close-in vehicle access. At the same time, the airport operator seeks the ability to obtain substantially similar concession fees from car rental competitors that do not even have the opportunity to become an on-airport concessionaire while providing only use of the airport public roadway system to the off-airport operators. We believe such a proposition is preposterous and discriminatory by its very nature.

Federal intervention to prevent the seemingly separate enactment of local access fee legislation which is actually encouraged, coordinated and supported by the primary airport associations, A.O.C.I. and A.A.A.E. is mandatory. The federal government has the responsibility while assisting to build and maintain the best air traffic system in the world to protect the interstate passenger from the usurious financial inclinations of the airport operator at the passenger's destination. The rental car passenger traveling from St. Louis, Missouri has no political representation to protect him from usurious fees and charges when he deplanes in Sarasota, Florida absent federal legislation to protect him in his travels throughout these various local jurisdictions.

We support the efforts of the Americans Against Unfair Airport Fees. If we can be of any further assistance by providing additional information or testimony before your subcommittee, we will be pleased to do so. Thank you for your consideration of our views.

Best regards,

DOLLAR RENT A CAR SYSTEMS, INC.

Gary L. Paxton
Senior Vice President
Operations & Properties

Greater Louisville
MOTEL - HOTEL ASSOCIATION, INC.
6802 Windhurst Road • Louisville, Ky 40207
(502) 454-0052
Lester M. Nichols, Executive Vice President

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Altaf Virani CHA
Ramada Hotel
Jeffersonville

ASSOCIATE DIVISION REPRESENTATIVE
C D Johnson (Ex Officio)
RCA Div of The General Electric Company
Louisville

LOUISVILLE RESTAURANT ASSOCIATION
Vincent D Grisanti (Ex Officio)
Ferd Grisanti Restaurant
Jeffersontown

October 2, 1987

The Honorable Wendell Ford
SR 173 A, Russell Building
Washington, D.C. 20510

Dear Wendell:

Wendell, I am writing in support of the proposal to require reasonable, fair and non-discriminatory airport access fees for off-airport courtesy vehicles. As a member of Americans Against Unfair Airport Fees, I know that representatives of our coalition testified before the Aviation Subcommittee, of which you are the Chairman, on September 17th. I could not get away to attend the hearing but wanted to participate in bringing the Subcommittee a full and complete understanding of the point of view of the off-airport businesses who operate courtesy shuttles for our guests.

In that regard, I would like to ask you to place this letter in the record of the hearing. I would like to relate my experience with the local airport here in Louisville for your benefit. Some years ago, the airport arbitrarily put a courtesy car/taxi cab levy on said vehicles using airport property. This was done with strong opposition to that levy by our Association. Their desire to increase that fee, at any time, is arbitrary and, we think, unfair.

Another issue I want to address in this letter concerns the airport's representations to you that they need the revenue from off-airport operators. They have argued that if Congress puts any kind of a limit on their power to set access fees, that limitation could have a material adverse effect on their ability to pay their debts as they become due and could lower their credit rating. It is my opinion that neither of these arguments is supported by the facts.

ABILITY TO PAY DEBTS

Airport revenues consist primarily of three components: landing fees paid by airlines, rent paid by lessess of space in the terminal complex, and fees paid by concessionaires. These three sources of revenue typically account for most of an airport's total revenues and are almost always sufficient by themselves to service an airport's debts. Indeed, bond indentures frequently require that an airport's revenues from these three sources alone equal at least 1.25 times the airports annual debt service requirements. By contrast, access fees for off-airport courtesy vehicles typically account for a very small percentage of total revenues. Even if Congress totally banned access fees, a far more radical proposal that AAUAF has suggested, the loss of that revenue to the airports would not have a material adverse effect on an airport's ability to pay the principal and interest on its bonds or to pay its other debts as they become due.

Access fees calculated on a gross receipts basis are imposed at Sarasota and West Palm Beach airports. In recent prospectus' neither airport made mention of the imposition of those fees, nor did they indicate that the airport intended to rely on those fees to demonstrate their ability to repay the securities covered by the prospectuses'. Looking at the issue of airport revenue objectively, it is clear that the airports intend to add to their bottom line, even though they are not profit oriented entities, through these fees. There is simply no evidence that on-airport concession revenue is falling off, rather it is rising at both West Palm Beach and Sarasota.

The airports have said that the elimination of access fees for off-airport courtesy vehicles would create an incentive for on-airport car rental companies and other concessionaires to move to off-airport locations, thus decreasing airport revenues from concession fees. This concern is totally unfounded. At those airports that do not impose access fees, there have been few, if any, relocations by on-airport car rental companies to off-airport locations to avoid concession fees, nor has there been any material decrease in revenues derived from concession fees paid by such companies. There are clear business advantages to operating on the airport property. There will always be some company willing to try to take the place of the on-airport company because there will always be air travellers who need to rent a car right there at the airport.

CREDIT RATINGS

It is also highly unlikely that the elimination of access fees for off-airport courtesy vehicles would have any effect on an airport's credit rating. I looked at a couple of documents I got from a broker about airport bonds. From what I saw in those materials, the two principal factors that rating agencies look at to determine an airport's credit rating are the trend in the number of enplanements and the trend in the number of origin and destination (O&D) passengers. Niether of these factors is affected by revenues from access fees or any other source. Other factors considered include various debt ratios (e.g., debt per enplanement, debt per O&D passenger and debt to fixed assets), the airport's capital improvement plan, the economy of the metropolitan area, the major carriers serving the airport, and special factors such as whether the FAA limits traffic at the airport. Again, none of these factors is affected by access fee revenues.

In addition to the foregoing factors, the rating agencies examine results of operations and debt service coverage. Although these two factors do depend on total revenues, the revenues derived from access fees account for such a small percentage of total revenues that they have an insignificant effect on either of these factors. In any event, these factors are just two of several considered and are not among the most important factors considered.

Sincerely,

Lester M. Nichols

Lester M. Nichols
Executive Vice President

LMN/ed

Alamo
Rent A Car

October 7, 1987

Senator Wendell H. Ford
Room 173A Russell Senate Bldg.
Washington D.C. 20510

Dear Senator Ford:

At the hearing before the Aviation Subcommittee held on September 17th, witnesses for the airports submitted the results of an unscientific and unrepresentative shopping survey of rental car companies both on and off airport at Tampa International Airport. The survey that was submitted to the Subcommittee was highly misleading.

Our quoted walk-up/rack rate in Tampa on the 8th of August for a subcompact car was $21.99 per day. The $27.99 rate which was charged to the airport's shopper was the rate applied to a compact car. For purposes of comparison, a subcompact car would be something like a 2 door Chevrolet Chevette and a compact car would be something like a Chevrolet Cavalier.

For your information, I have attached a comparison of walk-up rates quoted by Alamo and its competitors in Tampa on September 29th. These rates are shopped in Tampa by telephone every morning by our Tampa office. We shop our competitors on a daily basis in all of our cities to ensure that we are competitive on a daily basis.

When a consumer rents a car, the cost-conscious individual will take the time to learn what the rental companies' policies are with respect to late charges, fuel charges and other charges in order to make the most economical use of his or her rental vehicle. The survey performed at Tampa did not permit the shopper to use his or her best judgement to get the best value for his rental dollar. Likewise, the survey as reported to the Subcommittee did not fairly identify all of the charges that each company imposed. Let me explain:

Late return charges for extra hours are common in the rental car industry. Different companies have different policies. For example, Hertz, in my opinion, has an extremely complicated system for determining late return charges. Dollar charges $9 per hour for extra hours. Alamo always makes its policy known to the renter while he or she is at the counter. We think our policy is fair. Obviously, returning an Alamo car with a full tank is contrary to our gas policy. Again, we make every effort to fully inform renters of our gas policy before they leave the counter. For daily renters, we still refund part of the gas charge if the customer has travelled less than 50 miles. Almost every rental car company in Florida has an extra driver charge. It is markedly unfair to single out Alamo for our extra driver charge when Hertz also has a $3/day extra charge for drivers under 25 years old.

Corporate Office 1401 South Federal Highway, Fort Lauderdale, Florida (305) 463-2604 / (305) 522-0000
Mailing Address P O Box 22776, Fort Lauderdale, Florida 33335
Rent A Car Reservations 800-327-9633 - Telex 803 926

We endeavor to always price Alamo competitively in all pricing environments. Our least expensive rates will always be available through airlines systems or over the telephone by calling our WATTS line. Walkup rates are frequently established by the prevailing car availability in each city at the time of rental. As we take so many reservations for the subcompact at our lowest rates, it is possible that Tampa had used all of their subcompact cars at some point and was forced to quote compact prices at the local prevailing walkup rates.

If there is any other information I can provide to the Subcommittee, please, please let me know. Since the results of the Tampa survey will be incorporated into the record of the hearing, I would be grateful if you could please place this letter in the accompanying attachment in the record so that the distortion perpetrated by the survey does not go unanswered.

Sincerely,

Robert M. Coffey
Vice President
Market Planning

WALKUP RATES TAMPA FLA. SEPTEMBER 29TH, 1987.

	DAILY	WEEKLY
ALAMO	$23.99	$69.00
VALUE	$23.00	$68.00
BUDGET	$34.00	$149.00
DOLLAR	$23.95	$69.00
AVIS	$27.00	$99.00
HERTZ	$28.99	$79.00
NATIONAL	$24.00	$99.00
GENERAL	$21.99	$69.00
LINDOS	$17.00	$69.00

THESE RATES WERE QUOTED BY EACH RESPECTIVE COMPANY IN TAMPA.

FINE AIRPORT PARKING
2010 N. MEMORIAL
TULSA, OKLAHOMA
74115

The Honorable Senator
Nancy Kassebaum
United States Senate
Washington, D.C. 20510

On Thursday, September 17, I was part of the audience at the Subcommittee on Aviation Hearings. Even though I was not one of the scheduled panel speakers representing small businesses operating near our city airports, I, nevertheless, would like to share my concerns with you, the committee and for the official record.

First, let me formally introduce myself. My name is Clifton L. Taulbert of Tulsa, Oklahoma. I am the co-owner along with Michael B. Fine of FINE AIRPORT PARKING, an off-airport parking facility located near Tulsa's International Airport.

The "Hearings" on September 17 were historical activities for both myself and my partner (michael). Now, I appreciate even more our system of Government that we enjoy that provides for the average citizen the opportunity to have a voice, their day in court. I also sensed a genuine concern on your part that you be provided the facts from both sides. Thank you. Your state (kansas) can be rightfully proud of your decision to lend to us your service.

At this point Senator, you and your committee deserves an APOLOGY from my business as well as the thousands of other small businesses that operate near our nation's airports. Rather than keeping our congressional delegations informed on the multiplicity of airport related incidents and cases of intimidation, we have silently stood by and watched as our files grew thicker. We abdicated our responsibility and have thus placed you and the Subcommittee in a position of not knowing the historical gravity of our concerns. When a small business gross less than one million dollars per year and in some instances less than $50,000.00 per year, it is not easy to deal with our airports that are viewed as billion dollar industries.

Whereas our airports are in a unique position of having communicated with you (Congress) on a regular basis. You know them. You know their aides. You have attended their functions. For decades they have been the story tellers. I feel certain that during the course of their many visits and official briefs, not often have they requested guidelines that would help them to deal fairly with the small businesses springing up.

As a result of this one may have assumed that "All was well in Denmark". All may have been well as related to the continued upgrade of our airport and management skills, but the attitude of control and intimidation toward some off-airport businesses was continuing as usual. Airports have historically displayed this type attitude. (see exhibit #1).

THIS IS NOT AN ALAMO ISSUE

Fortunately, Alamo's concerns reflected many of ours and their issue has served as a catalyst to make us as small independent businesses stand up and make you aware of the incidents we have faced and the frustrations endured through the years.

Senator, you may ask the question: What do you want congress to do or the Airports to stop doing? Let me try to answer both questions by providing my answer to a question posed by you to the panel representing Off-Airport Businesses at the September 17 Hearings.

WHY NOT LOCAL NEGOIATIONS?

Senator, let me share with you rather briefly the Fine Airport Parking story:

When Michael and I started our off-airport parking business, we were very "Green" and had no idea that our business, though competitive with the airport would produce the amount of tension and negative reactions that occurred.

- We initially met with our airport director and surprisingly with his attorney on the morning of 9-6-83 at 10am for the purpose of saying "Hello" and determining the regulations and fees if any. That meeting unfortunately set the stage for our relationship to date. As two young entrepreneurs risking our collateral,we were never once welcomed to the airport community.

  Instead, we were told the many ways that they had availiable to condemn our business. We were also told at that meeting that they were looking at ways to charge us a percent of our gross income. We had committed ourselves to our business, but on that day, we experienced a meeting that scared us.

- We had no more communications with the airport until 11-7-83 when we received the infamous "Cease and Desist" letter. (exhibit # 2)

- Even though we were afraid, our attorney assured us that the letter though official was illegal and not binding. We proceeded to develop an excellent business and carve out a market niche for ourselves, realizing that we were just one of the consumer alternatives.

- During this time frame, one to three years, our business became extremely popular and Tulsans fell in love with the parking lot that had been designed to serve them. Our files are filed with letters that attest to this fact. (exhibit # 3). As our popularity grew, we began to suffer harrassment from our airport, and incidents too numerous to outline at this point.

- Their first attempt to impose an "Unfair" ordinance was defeated and that defeat was supported by the then mayor, Mr. Terry Young. The support that we received from the Tulsa business community was overwhelming. They remembered the airport prior to increased competition (exhibit # 4).

- 1986, a new mayor, a new ordinance proposal. At this point the more visible of the small airport related businesses joined together informally for the first time in our history to stand up for our rights. Individually, we could not have endured the intimidation. We made a decision to gather all the facts and intelligently inform the city fathers and the appointed authority members about our concerns. We were heard, but we realized that we were not strong enough to make a dent upon the decisions that had already been made. We were told early on that we would lose and that no small business had ever won against the Airport.

- Prior to the vote coming to the City of Tulsa, the Ordinance proposal had to be passed by the appointed authority. On the day they voted to pass the request and impose an ordinance, the stats used by the airport to substaniate their position for an ordinance were proven over 85% false. This can be verified by Channel 2 News. False numbers, the Ordinance proposal passed anyway.

- During the time between the Airport Authority voting to impose an ordinance and it coming before our city commission, as small businesses, we made one last effort to be heard. We knew that there was no need for funds. But we went ahead and drafted a counter ordinance (exhibit # 5) hoping that after all our research, some of our concerns would be reflected in the new ordinance.

NOT ONE OF OUR RECOMMENDATIONS WERE CONSIDERED

One commissioner feeling rather sorry for us said and I quote: (Talking to the airport legal counsel) "I will be watching you to make sure that you do not treat these Tulsa Businesses unfairly."

> That commissioner within months resigned.. he now works for the FHA. How can he watch out for us. The Ordinance is law and he has another job.

- Because of our past experiences, we were afraid that the new ordinance would give unprecedented powers to the director and no formal line of communication for us. We were right. On the day that the ordinance passed, one commissioner had to clearly point out that any increase in fees had to come before them. The airport attorney replied, "This is not the understanding of the Airport Director." The commissioner replied, "I can't help what he understands, you have to come before this body."

ONLY THEN DID THEY REALIZE THE INTIMIDATION THAT WE WOULD FACE, BUT THE ORDINANCE WAS LAW

We had the opportunity to work together and create a model type ordinance for our city, but our difference in perspective kept us from acomplishing this. I realize that aviation is not your every day type business, and because of this, our cities have left the airports and their governing bodies to themselves. They have become muscle bound and now enjoy their control position. I respect their position and responsibilities but in no way exempt them from the morality of the law and the responsibility they have to the people. As small businesses, we have been afraid to speak out, because they have been able to intimidate us due to their size and clout. Unfortunately, we operate in a THEM AGAINST US environment.

Airports may have started out as toy facilities for the rich, but they have over the years become a resource for the people. As one of our resources, it has also served as a catalyst for birthing new businesses around that environment. Our airports, the military or any other major public resouce should be proud of the fact that "Entrepreneurship" can thrive in their enviroment. To me this is "TRICKLE DOWN AT ITS BEST." It would be devesatating if this % of gross concept becomes acceptable and all quasi-public businesses declared the right to protect their income from the very people who are making it all happen.

We have made the choice to operate off-airport. We have also made the choice in many instances to purchase our property and support our city through property taxes and the other taxes related to private businesses. we have supplied our financial institutions with the required collateral and if we fail, we have no recourse. Review the bankruptcy backlog. Whereas hundreds of other businesses have chosen to locate On-airport and bear the related expense. Should they be protected from competition? No one protects us.

In summary, our airports should be allowed the flexibility to operate and manage within the established guidelines and reflect the flavor and the economy of their city; however, it has become increasingly evident that legislative (national) action is needed to curb the attitude of control and intimidation and reduce the overgrown muscles.

Such a federal guideline would ensure that the airport, no matter the city, and the business whether competitive with on-airport businesses or not would be forced to negoiate based on a standard set by the people. Now, it is arbitrary. we are at the mercy of a director, his ego and in some instances a city board that has removed itself from the operations and personality of the airport.

Also to be considered are the appointments of the Airport Commission members. In most cities, these position that impact the lives of millions and daily impact the business activities of small businesses, are considered PLUM appointments, rewards for political involvement. I have no problem with this perse, but it would be more just if at least a sprinkling of more average americans and those not so wealthy (minorities) were part of these boards. Giving us all a chance to participate in our Airport Resource would help toward healthy growth and development and not the over developed muscle we have faced in many cities.

I feel certain that some airports, their boards and their directors have chosen to be fair in spite of the lack of a guideline that calls them to "Fairness". However, they are far and few between. Airport directors, their boards come and go....but small businesses will continue to be the back bone of our nation. Many of us depend upon interstate commerce as part of our business market and undue and unfair fees would be unduly burdensome.

The flying public is our market. They are a shared market. An airport, a rental car, a florist shop, a baggage delivery service or a parking facility like ours would be location worthless if the market chose not to fly. I welcome "FAIR FEES" that would be reflective of a regulatory need, but not a fee designed to punish us as entrepreneurs for getting into the same type of business as operated on the airport or by the airport.

I appreciate the opportunity to write you. And when the challenge becomes too big and all the states are involved with customers from different states...it's good to know that in America, we have a recourse.

Thank you sincerely,

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